Office-Supreme Court, U.S.
FILED
JUN 20 1984
ALEXANDER L. STEVAS,
CLERK

84-134

Case No.

Supreme Court

of the

United States of America

In The Matter of

Peter J. Coruzzi

On Appeal From The Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

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125pp

QUESTION PRESENTED

Whether a state statute, which required the payment of salary to suspended Judge for any period of that suspension exceeding ninety days became constitutionally infirm when it was amended to delete the "required pay" provision and was applied to one who was suspended prior to said amendment, said constitutional infirmity being based on the ex post facto clause, Bill of Attainder clause and impairment of contract clause of the United States Constitution.

IN THE

SUPREME COURT OF THE UNITED STATES

Docket No.

October Term, 1983

In The Matter of Peter J. Coruzzi, Judge
of the
Superior Court of New Jersey

On Appeal From The Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

Peter J. Coruzzi, the Appellant, appeals from that portion of the final decision of the Supreme Court of New Jersey, dated March 20, 1984, upholding the validity, under the Constitution of the United States, of an amendment to N.J.S.A. 2A:1B-5 which would allow a Judge to be suspended without pay indefinitely when said statute, without the amendment, would not allow such suspension without pay at the time of the Appellant's

suspension.[1] This Jurisdictional Statement is submitted to demonstrate that the United States Supreme Court has jurisdiction of this appeal and that a substantial question is presented warranting plenary review.

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1. In the same opinion, the New Jersey Supreme Court removed the Appellant from the bench and prohibits him from holding judicial office thereafter. The Appellant is not appealing that portion of the decision.

TABLE OF CONTENTS

Question Presented. . . . . .Cover Sheet

Jurisdictional Statement. i

Table of Contents iii

Table of Authorities. v

Opinion Below 2

Jurisdiction. 2

Constitution Provisions and Statutes Involved 2

Statement of Case 3

Legal Argument:

A. N.J.S.A.2A:1B-5, as Amended, is an Ex Post Facto Law in violation of the Constitution of the U.S.(Article I,Paragraph 9,Clause 3, as applied to Defendant-Appellant). 7

B. N.J.S.A.2A:1B-5, as Amended and as Applied to the Defendant-Appellant is a Bill of Attainder in Violation of the Constitution of the U.S.(Article I, Paragraph 9, Clause 3. 15

C. N.J.S.A.2A:1B-5, as Amended impairs the obligation of a Contract and is, therefore, in violation of the Constitution of the U.S.(Article I, Section 10). . . 18

Summary and Conclusions 24

APPENDICES:

Opinion of the Supreme Court of N. J.: March 20, 1984 and copy of the Notice of Appeal to the Supreme Court of the United States. . . . . .A

Opinion of the United States District Court . . . . . .B

Opinion of the U.S. Ct. of Appeals for the 3rd Circuit. C

Constitutional Provision and Statute Involved . . . . . .D

N. J. Senate Bill No. 3517 (the amendatory provision) . . . . .E

TABLE OF AUTHORITIES

Allied Structural Steel Co. v. Spannaus
438 U.S. 234, 57 L.Ed. 2d 727(1978)...21,23

Burello v. State Emp. Retire. System
49 Commonwealth Ct. 364(1980). 12,14

Cummings v. Missouri
71 U.S. (4 Wall.) 277,325-29,18
L.Ed.2d, 356(1866). 8,16

Fletcher v. Peck
10 U.S. (6 Cranch) 87,138, L.Ed.
162 (1810) 8

Garner v. Board of Public Works
341 U.S. 716, 71 S.Ct. 909, 95
L.Ed. 1317(1951) reh. denied
342 U.S. 843, 72 S.Ct. 21, 96
L.Ed. 637 16

Harisiades v. Sharighness
342 U.S. 580, 594-95, 72 S.Ct. 767,
96 L.Ed. 586 (1952). 8

Hiss v. Hampton
338 F.Supp. 1141 (DC DC 1972). 10,11,
12,13,
14

Morseburg v. Balyon
621, F.2d 972(9th Cir. 1980). 22

Nixon v. Administrator of General
Services
433 U.S. 425, 97 S.Ct. 2777, 53
L.Ed. 2d 867 (1977). 16

State of Indiana, ex rel. Anderson
v. Brand
303, U.S. 95, 82 L.Ed. 685(1938). . . 19,20

Stoneridge Apts. Co. v. Lindsay
303, F.Supp. 677 (S.D.N.Y. 1969). . . 20

(Continued) TABLE OF AUTHORITIES

United States v. Lovett
328 U.S. 303, 66 S.Ct. 1073, 90 L.Ed. 1252 (1946). . . . 16,17

United States Trust Co. v. New Jersey
431 U.S. 1, 52 L.Ed. 2d 92 (1977) . . . 20,23

OPINION BELOW

The Opinion of the Supreme Court of New Jersey, dated March 20, 1984 has not yet been reported, but is reproduced herein as Appendix A.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on March 20, 1984. Notice of Appeal and the Jurisdictional Statement was filed within 90 days of this date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(2). See Erzonznik v. City of Jacksonville, 422 U.S. 205, 207 n.3 (1975)[2].

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The Constitutional Provisions and Statute involved are reproduced herein as Appendix D. The Bill which amended the Statute involved (N.J.S.A. 2A:1B-5) is reproduced herein as Appendix E.

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2. Appellant believes that the jurisdiction of this Court is properly invoked, under 28 &.S.C.§1257(2), However, if this Court does not agree, Appellant respectfully requests that its Jurisdictional Statement be treated as a Petition for a Writ of Certionari to the New Jersey Supreme Court.

STATEMENT OF THE CASE

The Appellant in this matter was a Judge of the New Jersey Superior Court from September 21, 1977 until March 20, 1984, the date that the New Jersey Supreme Court issued their Order For Removal. On November 10, 1981, the Supreme Court of New Jersey acted pursuant to the statute of the State of New Jersey referred to as "an Act concerning the removal of Judges from office", N.J.S.A. 2A:1B1 et seq. The full text of this statute is set forth in Appendix D. This statute provided on the date of the Supreme Court's Order of Suspension that a suspension may be made by the Supreme Court during the pendency of the removal proceedings either with or without pay "provided, however, that a Judge shall receive pay for the period of suspension exceeding 90 days." N.J.S.A. 2A:1B5.

In addition, on December 10, 1981 a Bill was introduced in the New Jersey

Legislature to amend the provisions of N.J.S.A. 2A:1B5, to delete the requirement that a suspended Judge receive pay after the 90th day of suspension. (Senate No. 3517 and Statement thereto reproduced in its entirety and attached as Appendix E). This Amendment was passed by vote of the Legislature and was signed into Law by then Governor, Brendon Byrne on January 12, 1982.

The Supreme Court of New Jersey has determined to apply the amended statute herein challenged. The Defendant's suspension continued beyond the 90 day period and he has received no salary, whatsoever, in accordance therewith.

This matter was initially opened to the United States District Court for the District of New Jersey, by Complaint filed on February 23, 1982. The issues before the United States District Court were whether the New Jersey statute

previously referred to and amended, constitute a prohibited ex post facto law and/or a Bill of Attainder in violation of the United States Constitution. These issues were raised before the United States District Court, for the District of New Jersey by way of Motion For Summary Judgment and by Opinion and Order dated May 13, 1982. Appellant's Motion for Summary Judgment in his favor was denied and Appellee's Cross-Motion for Summary Judgment (which requested dismissal of the Complaint) was granted.

In an Opinion filed on April 22, 1983, the United States Court of Appeals For The Third Circuit confirmed the decision of the United States District Court; however, not for the reasons given by the United States District Court. The Third Circuit held in its Opinion that the Appellant has the "ability and opportunity to raise as Federal Constitutional claims", before the New Jersey

Supreme Court by requesting modification. Thus, on May 13, 1983, Appellant moved before the New Jersey Supreme Court for modification of the Order of the Supreme Court suspending the Appellant without pay, indefinitely.

The Opinion of the United States District Court for the District of New Jersey, referred to above, is reproduced herein as Appendix B. The Opinion of the United States Court of Appeals for the Third Circuit, referred to above, is reproduced herein as Appendix C.

On March 20, 1984 the New Jersey Supreme Court issued its decision, holding that the statute, as amended, was not an ex post facto Law nor was it a Bill of Attainder, nor did it impair any contractual right of the Appellant. The statute, as amended, was therefore upheld as constitutional.

LEGAL ARGUMENT

A. N.J.S.A. 2A:1B-5, as Amended, is an Ex Post Facto Law in violation of the Constitution of the U.S. (Article I, Paragraph 9, Clause 3, as applied to Defendant-Appellant)

It is clear in the instant matter that the New Jersey Statute controlling the suspension of Judges of the Superior Court was significantly changed between the date that the Defendant-Appellant was actually suspended and present. (It goes without saying that the amendment of N.J.S.A. 2A:1B-5 took place significantly after the alleged events which form the basis of the suspension). The question herein is whether an amendment intended to deny a right to payment of a salary, which right existed at the time of (a) the alleged wrongful acts constituting the cause for removal and suspension and; (b) the time of the actual suspension, is an ex post facto law in violtion of the U. S. Constitution.

Article I. Section 9, Clause 3 of the U.S. Constitution reads as follows: "No Bill of Attainder or ex post facto law shall be passed." The prohibition against ex post facto laws has traditionally been applied to statutes strictly criminal in nature. However, as noted in Harisiades v. Sharighness, 342 U.S. 580, 594-95, 72 S.Ct. 767, 96 L.Ed.586 (1952), reh. denied. 343 U.S. 936, 72 S.Ct. 767, 96 L.Ed. 1344 (1952), there has always been a recognition that this protection should also apply to novel disabilities imposed on citizens which are really criminal penalties disguised in a civil form. See Fletcher v. Peck, (US) 10 U.S. (6 Cranch) 87, 138, 3 L.Ed. 162 (1810); Cummings v. Missouri, 71 U.S. (4 Wall) 277, 325-29, 18 L.Ed.2d 356 (1866). In Cummings v. Missouri, the Court made it clear that "the deprivation of any rights, civil or political, previously enjoyed may be punishment..."

The New Jersey Statute in question, though not "criminal" in the strictest sense, is certainly punitive in any sense. It provides for the removal of a Judge from his position and/or the suspension of a Judge from his position and the option to deny a Judge pay while any proceedings are pending. In the instant matter, the State of New Jersey has argued that the statute in question has as its purpose the regulation of the judiciary only. This, of course, is permissible. However, when the statute was amended, Appellant was deprived of a significant right "previously enjoyed" (at the time of suspension), to receive pay for the period of suspension exceeding ninety days. It is at this point that the statute, as applied to this Appellant, ceases to become regulatory (as to future conduct) in nature and becomes solely punitive and as such must fall.

There are a number of cases dealing with other types of "civil" deprivation which are applicable to the facts of this petition. Perhaps the best known of these is Hiss vs. Hampton, 388 F. Supp. 1141 (D.C. D.C. 1972). In that case plaintiff, Hiss, had worked as an employee of the Federal Government for sufficient number of years so as to qualify for an annuity, under the Civil Service Retirement Act, at age 62. After his retirement from government service, Hiss was found guilty of an act of perjury before a Federal Grand Jury. Sometime thereafter the Congress enacted legislation which mandated that a person who has committed the offense of perjury may not receive an annuity or pension benefit from the government. Upon reaching age 62, Hiss applied for his annuity which was denied on the basis of the above referenced legislation.

Hiss argued that the statute in question constituted an ex post facto law because it was enacted after the conduct it sought to punish. Defendants argued that the law was a permissible regulation of federal employees and was not criminal in nature and this made it outside the purview of the Constitutional prohibition of ex post facto laws.

The District Court of the District of Columbia rejected Defendant's argument and struck down the legislation as applied to Plaintiff. In so doing it held:

> "...a statute is an ex post facto law, and invalid, if its purpose and effect are to punish for past conduct and not to regulate a profession, calling or present situation. Hiss v. Hampton, Supra, 338 F.Supp. at 1148.

In applying this reasoning, the Court looked past the civil "disguise" of the legislation to its clearly punitive effect. The analogy to the present situation is

clear. Both cases involve the entitlement to payment and both cases involve the attempted application by the government of a law passed after allegedly prescribed conduct to prohibit payment.

Another recent case dealing with the same principles is Burello v. State Emp. Retire. System, 49 Commonwealth Ct. 364 (1980). In that case the Supreme Court of the Commonwealth of Pennsylvania had to deal with a factual situation almost identical to that presented in the Hiss matter, id. In holding that the Pennsylvania law was unconstitutional as applied to Burello, the Court noted that the act by which his disqualification from pension benefits was based, clearly took place prior to the passage of the relevant legislation and therefore the purpose could only be punitive, not regulatory.

Does N.J.S.A. 2A:1B-5, fall within the classification of statutes prohibited by

the ex post facto clause of the Constitution? To answer this question, the Court must only determine whether its effect, as applied to Appellant, is regulatory or punitive. In this case, the denial of property (income) is clearly punitive in intent and effect. Accordingly, this statute cannot be applied to Appellant and, therefore, his pay as a Judge of the Superior Court must be reinstated as of February 9, 1982.

The Appellant wishes to make respectfully clear that the statute as it now reads is regulatory in its effect as to future situations, future conduct and future employees. The statute as amended has no regulatory effect as to this Appellant and as to this Appellant is punitive only. As the Hiss Court, supra, stated, 338 F.Supp. at 1148 "retroactive punishment by former employees for their past misdoings has no reasonable bearing upon the regulation of the conduct of those presently employed".

It continues to be Appellant's position that the application of this statute to him can have no regulatory effect whatsoever.

It should also be emphasized that no legislative history was found to be existing in both the Hiss and Burello cases. The legislative history pertaining to the amended statute in question is non-existent. However, the speedy manner in which it was passed, (date of introduction: December 10, 1981; signed into law: January 12, 1982) indicates that there were few, if any, legislative hearings. This was not legislation which was a result of any judicial meetings or conference which attempted to make more perfect the regulatory sections of our statutes. The inescapable conclusion is that this was singularly an act which was to accomplish one thing, that being to prohibit the Appellant from receiving any remuneration to which he was entitled under the statute

which was in effect at the time of his suspension.

B. N.J.S.A.2A:1B-5 as Amended and as Applied to the Defendant-Appellant is a Bill of Attainder in Violation of the Constitution of the U.S. (Article I, Paragraph 9, Clause 3.

The history of the Amendment to N.J.S.A.2A:1B-5 is set forth in the factual recitation above. In addition, the full act has never before been utilized in an attempt to remove a Judge of the Superior Court. It is very instructive to note that the need for an Amendment to Section 5, to delete the provision for pay after 90 days, was not felt until it became apparent that Appellant's suspension would run beyond 90 days.

The definition of the term, "Bill of Attainder", has received a great deal of thought by this Court since the enactment of the Constitution. It has

generally been defined as legislation which applies to named individuals or an easily ascertainable group in such a way as to inflict punishment on them without a judicial trial. Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 18 L.Ed. 356 (1860); U.S. v. Lovett, 328 U.S. 303, 66 S.Ct. 1073, 90 L.Ed. 1252 (1946); Garner v. Board of Public Works, 341 U.S. 716, 71 S.Ct. 909, 95 L.Ed. 1317 (1951) reh.denied 342 U.S. 843, 72 S.Ct. 21, 96 L.Ed. 637; Nixon v. Administrator of General Services, 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed 2d 867 (1977).

In U.S. v. Lovett, supra, individuals challenged an Act of Congress which prohibited payment of salary to those persons for their services as employees of any department, agency or instrumentality of the United States. In holding this to be a prohibited Bill of Attainder, the Court stated that the statute,

> "... clearly accomplishes the punishment of named individuals without a judicial trial. The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty, makes it no less galling or errective than if it had been done by an Act which designated the conduct as criminal. U.S. v. Lovett, supra, 328 U.S. 303, at 316.

In the instant matter the above quoted language is totally applicable. The legislation attacked here punishes an easily identifiable individual by cutting off his pay. this action is certainly no less galling than if the legislature had passed a law summarily removing Appellant from his position as a Judge of the Superior Court.

At some point, as stated in Lovett, we must recognize that the Framers of the Constitution saw inherent danger in special legislative acts, as presented here, which take away the life, liberty or property of individuals because the legislature thinks them guilty of conduct which deserves

punishment. N.J.S.A. 2A:1B-5, as amended is designed to take away a right to payment after 90 days. It is supported only by the suspension of Defendant-Appellant by the Supreme Court, not by removal from office after a full due process hearing. For these reasons N.J.S.A. 2A:1B-5, as amended, being a Bill of Attainder, must fall.

C. N.J.S.A. 2A:1B-5, as Amended impairs the obligation of a Contract and is, therefore, in violation of the Constitution of the U.S. (Article I, Section 10).

Article I, Section 10 of the United States Constitution states that "No state shall...pass any...Law impairing the obligation of Contracts...". In the case at Bar, Defendant-Appellant was a Judge of the Superior Court, serving a seven year term pursuant to the New Jersey Constitution, Article 6, Section 6, Paragraph 3. Pursuant to his appointment, the State has a contractual obligation to pay the Defendant-Appellant during his term.

The State Law is always a part of a contractual relationship. In the case of State of Indiana ex. rel. Anderson vs. Brand, 303, U.S. 95, 82 L.Ed. 685 (1938), the States Teacher's Tenure Law was read into Petitioner's Contract and an attempted Repeal of same was ineffective as to teachers who had entered into employment contracts during effective period of Legislation.

> "The principal function of the legislative body is not to make Contracts, but to make Laws which declare the policy of the State and are subject to repeal when a subsequent Legislature shall determine to alter that policy. Nevertheless, it is established that a Legislative Enactment may contain provisions which, when accepted as the basis of action by individuals, becomes Contracts between them and the State or its sub-divisions within the protection of Article 1, Section 10. Id. at 100, 690-1."

It has been said that the contract clause

"is clearly intended to protect the benefits and rights of a party under a Contract". Stoneridge Apts. Co. v. Lindsay, 303 F Supp. 677 (S.D.N.Y.) 1969). Toward that end, an impairment may be constitutional only "if it is reasonable and necessary to serve an important public purpose", United States Trust Co. v. New Jersey, 431 U.S. 1, 52 L.Ed. 2d 92 (1977). Thus, in that case, the United States Supreme Court struck down the retroactive Repeal of a 1962 Covenant between the States of New Jersey, New York and Bond Holders of the Port Authority. Citing the Indiana ex rel. Anderson case, supra, the Court stated that "A Statute is itself treated as a Contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State." United States Trust Co., Id., at 17, 106, fn. 14.

In the case at Bar, the State Legislature created a substantive contractual right by passage of N.J.S.A.2A:1B-5 by allowing a suspended Judge to receive pay for any period exceeding the 90th day after his or her suspension. In order to abrogate or modify the contractual right, the State must show that the abrogation or modification has not operated as a substantial impairment of the contractual relationship and if that impairment is severe, a "careful examination of the nature and purpose of the State Legislation" must then take place. See Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 57 L.Ed. 2d 727 (1978).

Although it may be argued, by the State, that the purpose of the Amended Statute is to deal with some envisioned patent unfairness in having a suspended Judge receive pay, in the case at Bar, this Statute will alter the contractual relationship of only one person with the State.

It cannot be argued that the Statute deals with an "important public purpose" as applied to the Defendant-Appellant. The language of the Court of Appeals for the Ninth Circuit is applicable" "(A)n impairment that is severe, permanent, irrevocable and retroactive and which serves no broad generalized, economic or social purpose violates the contracts clause." Morseburg v. Balyon, 621 F.2d 972 (9th Cir. 1980). Here, the Defendant-Appellant has lost more than two year's salary in excess of $140,000.00 to which he has a vested right as long as he remained a Superior Court Judge. This right to receive salary has been abrogated and legislatively destroyed by the Amendment as aforesaid. Thus the contractual right has been substantially impaired.

Further, it must be noted that the State's own Contracts, as questioned here, must face a "more stringent examination"

than those Contracts entered into between private persons. Allied Structural Steel, supra, at 244, 736, fn. 15. No Court need give "deference to a legislative assessment of reasonableness and necessity...(since) the State's self-interest is at stake". United States Trust, supra, at 25-26, 112.

In light of this stringent examination, the State cannot show that the Amendment was "enacted to deal with a broad, generalized, economic or social problem", nor is this a temporary alteration of a contractual relationship; it works "a severe, permanent and immediate change...irrevocably and retroactively", Allied Structural Steel, supra, at 250, 40. The Amendment must, therefore, be struck down as an impairment, in violation of the Contract Clause.

Summary and Conclusions

It is respectfully submitted that we are not dealing with a hypothetical situation such as those which might be set forth before a seminar, conference or a law school class. What that approach misses is that we are dealing here with an individual to whom this statute has been applied. We are dealing here with the deprivation of real human needs which continue, and which was not within the Statute at the time that individual came within its purview. As to that individual, all regulatory purpose of that Statute has long since ceased and the only effect that it now bears upon him is punitive in nature.

The reason that the Appellant came within the purview of the Statute in question is immaterial. What was allegedly done should be divorced from the effect of this Statute as applied to the Appellant. It is an ex post facto law. It is a Bill of

Attainder. It has impaired a contractual right in violation of the Contract Clause. This Amendment must, therefore, fall.

Respectfully submitted,

LARIO AND NARDI

BY:
Frank M. Lario, Jr., Esq.

On The Brief:

Robert A. Gleaner, Esq.

APPENDIX A

SUPREME COURT OF NEW JERSEY
D-2 September Term 1983

IN THE MATTER OF

PETER J. CORUZZI,

Judge of the Superior
Court of New Jersey

Argued: January 24, 1984 -- Decided:
March 20, 1984

On an Order to Show Cause why
respondent should not be removed
or otherwise disciplined.

Eugene J. Sullivan, Assistant Attorney General, argued the cause for State of New Jersey (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Mr. Sullivan and James J. Ciancia, Assistant Attorney General, of counsel; Peter R. Freed and Jonathan L. Williams, Deputy Attorneys General, on the briefs).

Roger A. Lowenstein argued the removal cause for respondent (Lowenstein, Sandler, Brochin, Kohl, Fisher, Boylan & Meanor, attorneys; Robert D. Chesler, on the brief).

Robert A. Gleaner argued the compensation cause for respondent (Lario and Nardi, attorneys).

The opinion of the Court was delivered by WILENTZ, C.J.

SUPREME COURT OF NEW JERSEY

No. D-2 September Term 1983

Disposition For Removal

In the Matter of

PETER J. CORUZZI

Judge of the Superior
Court of New Jersey

Order returnable _____ 19____

Decided March 20 19 84

Opinion by Chief Justice Wilentz

Checklist	OSC+ Temp. Susp.	OSC w/o Temp. Susp.	No OSC	For Remov	Acc. Resig	Rein state	Dis miss
Chief Justice Wilentz				X			
Justice Clifford				X			
Justice Schreiber				X			
Justice Handler				X			
Justice Pollock				X			
Justice O'Hern				X			
Justice Garibaldi				X			
Totals				7			

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized.)

IN THE MATTER OF PETER J. CORUZZI, JUDGE OF THE SUPERIOR COURT OF NEW JERSEY (D-2)

Argued January 24, 1984 --Decided March 20, 1984

WILENTZ, C.J., writing for the Court.

On November 6, 1981, Judge Peter J. Coruzzi was arrested immediately after having accepted a bribe. He was in possession of the bribe money ($12,000) at the time of his arrest.

The assignment Judge immediately relieved Judge Coruzzi of all duties, and, on the following day, the Supreme Court filed a complaint for his removal and suspended him without pay. Removal proceedings were then held in abeyance pending the outcome of the criminal proceedings against Judge Coruzzi.

On March 25, 1982, Judge Coruzzi was convicted of four counts of bribery. At trial, the evidence overwhelmingly established that the judge received or agreed to receive money in return for sentencing decisions that were favorable to the defendants in criminal cases in his court.

On May 7, 1982, Judge Coruzzi was sen-

tenced to five years in prison.

Following Judge Coruzzi's criminal conviction and sentencing, a three-judge panel was designated for the purpose of taking evidence in the judicial removal proceeding. The panel found that Judge Coruzzi's criminal conviction conclusively established his guilt, and that the facts and nature of the crime mandated his removal from office.

Aware of Judge Coruzzi's arrest and of the commencement of removal proceedings, the Legislature amended the Judicial Removal Statute to allow for the indefinite withholding of a judge's salary pending removal proceedings. At the time of Judge Coruzzi's suspension, the statute had only allowed for the withholding of a judge's pay for 90 days. Judge Coruzzi challenged the statutory amendment in federal court, alleging that it was unconstitutional as applied to him. The District Court found the statute constitional and granted summary judgment for the State. The Third Circuit Court of Appeals held that the federal courts should abstain from deciding the matter, since the case implicated important state issues, and since the state judicial proceedings were ongoing. Judge Coruzzi's motion for a modification of the order indefinitely withholding his pay was then brought before the Supreme Court of New Jersey, to be briefed, argued and decided along with the removal issue. Among Judge Coruzzi's specific contentions was his claim that the statutory amendment, aimed specifically at him, constituted either an ex post facto law, a bill of attainder, or an impermissible impairment of contract. He also argued

that his criminal conviction should not be relied upon to establish his guilt for purposes of the removal proceeding. He claimed that an independent factual hearing was required. Finally, the judge argued that the Supreme Court should disqualify itself from participating in his removal because, he alleged, the Court had prejudged his guilt and participated in his prosecution.

HELD: Judge Peter J. Coruzzi engaged in misconduct in office and therefore must be removed. The amendment to the removal statute, authorizing the indefinite suspension of pay during removal proceedings, is valid.

1. A judge who accepts a bribe must be removed from office. There can be no exceptions whatsoever (p. 7).

2. The Court concludes that the Legislature intended that the criminal conviction here should conclusively establish Judge Coruzzi's guilt for purposes of the removal proceedings. In these proceedings, the conviction is conclusive as to guilt and as to all of the facts on which it is based (pp. 14, 17).

3. There is absolutely no reason that would require that any member of the Supreme Court be disqualified from participating in Judge Coruzzi's removal proceedings. The Court prejudged nothing about Judge Coruzzi. It merely called for the institution of removal proceedings when confronted with the fact of the judge's arrest for bribery (p. 18).

4. While it is obvious that Judge Coruzzi's arrest brought to the Legislature's

attention the inadequacy of the 90 day salary suspension provision, this catalytic role does not make the law constitutionally infirm. There can be no doubt that a law of general applicability is not unconstitutional merely because its enactment was inspired by a specific example of the evil which it seeks to suppress (p. 29).

5. The constitutional prohibition of ex post facto laws forbids the enactment of any law that imposes punishment for an act that was not punishable at the time it was committed, or that imposes additional punishment to that then prescribed. The bar applies only to statutes that are by their nature penal. If the law is regulatory rather than penal, it is not an ex post facto law. The regulatory purpose of the amendment to the removal statute is evident: it helps the Court to preserve public confidence in the judiciary by not paying public funds to judges whose conduct warrants suspension (pp. 25-27).

6. An amendment that does no more than permit the Supreme Court to continue to withhold judges' salaries pending completion of removal actions hardly meets the description of a bill of attainder, i.e., the substitution of a legislative determination of guilt for a judicial decision (p. 28).

7. The amendment does not unconstitutionally impair any contractual right of Judge Coruzzi. It is well established that public officers do not have "contractual" rights to specific terms of compensation and employment within the meaning of the Contract Clauses of the U.S. and New Jersey Constitutions. Fur-

ther, the Constitution bars only impairments that are severe and are not reasonably necessary to serve important public purposes (pp. 30-31).

Judge Peter J. Coruzzi is REMOVED from office, effective immediately. He shall not hereafter hold judicial office.

JUSTICES CLIFFORD, SCHREIBER, HANDLER, POLLOCK, O'HERN and GARIBALDI join in CHIEF JUSTICE WILENTZ'S opinion.

Society invests its leaders with many powers. No power is greater, nor its responsibilities more awesome, than that given a judge. The power to render final judgment is limited only by the law and the judge's conscience. Society gives this power on condition that judges be independent, trusting them and no one else. Respondent sold this power, he sold his judgments, he sold his independence. He not only betrayed his trust, he betrayed New Jersey's tradition of judicial honesty: in the more than 35 years since the creation of our new court system, consisting now of more than 300 judges, only one other judge has been indicted.

This opinion disposes of two matters: the complaint instituted by this Court for removal of Judge Coruzzi, and his challenge to the statutory amendment that enabled us to withhold his pay indefinitely during the removal proceedings, the statute having

previously limited that power to 90 days. We hold the statutory amendment valid. We further hold that Judge Coruzzi must be removed from office.

Judge Coruzzi was arrested on November 6, 1981, immediately after having accepted a bribe.[1] He received the bribe from a lawyer while the two were driving in the lawyer's car to the courthouse. The lawyer had previously confessed to the bribery conspiracy and had been granted immunity from prosecution based on his agreement to cooperate. He was "wired" to enable law enforcement personnel to hear the entire conversation between the two as it took place. When Judge Coruzzi got out of the car at the courthouse he was, he was arrested. He had the bribe money

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1 Our conclusory statements of Judge Coruzzi's guilt are based on his March 25, 1982, bribery conviction.

($12,000) in his jacket.[2]

At the request of the Chief Justice, the Assignment Judge immediately relieved him of all duties. On the next day this Court filed a complaint for his removal and suspended him without pay. N.J.S.A. 2A:1B-3, -5. Pursuant to the removal statute, N.J.S.A. 2A:1B-10, we withheld further proceedings pending the outcome of the criminal action.[3]

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2 For details of this and the other bribery incidents, see infra at _____ n. 5 (slip op. at 7-8 n. 5).

3 N.J.S.A. 2A:1B-3 provides:

> A proceeding for removal may be instituted by either house of the Legislature acting by a majority of all its members, or the Governor by the filing of a complaint with the clerk of the supreme court, or such proceeding may be instituted by the Supreme Court on its own motion.

N.J.S.A. 2A:1B-5 provides:

> The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding.

(cont'd)

On March 25, 1982, Judge Coruzzi was convicted of four counts of bribery in violation of N.J.S.A.2C: 27-2.[4] The jury's verdict amounted to a finding that in three separate criminal matters Judge Coruzzi had accepted or agreed to accept bribes; that he agreed in two of them not to impose a custodial sentence and, in the third, to change a custodial sentence to non-custodial. In two of the cases, he received the money; in the third he solicited the bribe but never received it.

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3 (cont'd)

N.J.S.A.2A:1B-10 provides:

> No hearing to remove a judge from office as provided for in this act shall be held until the cause for suspension, if the cause is a result of an independent civil, criminal or administrative action against the judge, is finally decided in a tribunal in which the judge had an opportunity to prepare his defense and was entitled to be represented by counsel.

4 The convictions included instances of bribery in addition to that which led to his arrest. He was also convicted of official misconduct, in violation of

(cont'd)

The evidence against him was overwhelming. On May 7, 1982, he was given a five-year prison sentence. On appeal the Appellate Division affirmed, State v. Coruzzi, 189 N.J. Super. 273 (1983), and we denied certification. 94 N.J. 531 (1983).

The criminal matter having been concluded, the removal proceedings commenced. A three-judge panel was designated for the purpose of taking evidence in the matter pursuant to N.J.S.A. 2A:1B-7. The Attorney General prosecuted the removal proceedings in accordance with N.J.S.A. 2A:1B-4 (and defended the challenge to the constitutionality of the statutory amendment noted above and addressed in detail below).

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4 (cont'd)

N.J.S.A.2C;30-2, and of conspiracy to commit official misconduct and bribery, in violation of N.J.S.A.2C:30-2 and N.J.S.A.2C:27-2. The trial court dismissed these, sentencing respondent on the four bribery counts only.

Respondent declined the panel's offer to supply him with counsel and waived his right to appear at the hearing. The evidence before the panel consisted mainly of the indictment, the judgment of conviction, and documents evidencing respondent's voluntary waiver of counsel and right to attend the hearing. The panel found that the conviction conclusively established Judge Coruzzi's guilt and, given the facts alleged and the crime charged, mandated his removal from office.

At respondent's request, we then appointed counsel on his behalf. The matter (along with the dispute concerning his pay) has now been thoroughly briefed and argued by Judge Coruzzi's counsel and by the Attorney General.

During the course of the criminal proceedings, Judge Coruzzi brought a civil action in the United States District Court for the District of New Jersey seeking a

declaration that L. 1981, c. 522, the statutory amendment authorizing the indefinite withholding of pay during removal proceedings, was unconstitutional. The District Court ruled the statute constitutional and granted the State's motion for summary judgment. Coruzzi v. New Jersey, No. 82-535 (May 13, 1982). On appeal, the Court of Appeals for the Third Circuit affirmed, but on different grounds. It held that abstention by the federal courts was appropriate since the questions presented implicated important state issues and were the subject of an ongoing state judicial proceeding. Coruzzi v. New Jersey, 705 F. 2d 688, 690-91 (3d Cir. 1983). It assumed correctly that Judge Coruzzi could obtain a prompt adjudication of the federal constitutional issues through a motion made directly to this Court to modify our prior order indefinitely withholding his pay. Id. at 691. Such a motion has been

made and, as noted, was briefed and argued along with the removal issue.

The Removal Proceedings

We hold that a judge who accepts a bribe must be removed from office. There can be no exceptions whatsoever.

One might argue that there might conceivably be some bribery case somewhere with mitigating circumstances sufficient to justify discipline other than removal. That case will have to be argued elsewhere. In New Jersey nothing other than removal will do, no matter what the circumstances.[5]

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5 The indictment and the testimony show that the conviction in this case constituted a factual finding that, beyond a reasonable doubt, respondent, in three separate incidents, solicited bribes, and in two of these, received them.

In January 1981, respondent sentenced Eugene Bocelli to a five-year jail term for aggravated assault. In March 1981, respondent informed Louis Caggiano, a member of the bar, that upon reconsideration Bocelli could receive a suspended sentence and be released from jail "for a price." After a series of meetings (cont'd)

Respondent contends that the removal

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5 (cont'd)

between Caggiano and Bocelli's brother, the price of $10,000 was agreed upon, $7,000 of which would go to respondent. In May 1981, respondent encouraged Bocelli's attorney to file a motion for reconsideration and persuaded the Assistant Prosecutor not to object to that motion. Respondent then granted the relief sought, releasing Bocelli from prison.

When William Keyser, indicted for the theft of $33,500 found in the trunk of his car, appeared before respondent, respondent asked Caggiano to see what arrangements could be made regarding the matter, cautioning Caggiano to leave respondent's name out of any discussions. In October 1981 Caggiano contacted an attorney no longer representing Keyser and indicated that $35,000 would ensure a non-custodial sentence for Keyser. $25,000 would go to respondent. Respondent then contacted the same attorney by telephone to see if the attorney would attempt to be reassigned to Keyser's case.

In July 1981, respondent presided over a trial resulting in a jury conviction for arson against Sergio Morselli. Again, respondent asked Caggiano to contact Morselli to arrange for a suspended sentence. Respondent mentioned a price of $20,000. In October 1981, Morselli gave the State Police information on respondent's discussions with Caggiano. In exchange for a grant of immunity, Caggiano agreed to cooperate with the police and was fitted with electronic

(cont'd)

statute requires the Supreme Court (or the three-judge panel) to hear the underlying evidence that constitutes the cause for removal, that reliance on a criminal conviction is impermissible. He further contends that this Court should disqualify

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5 (cont'd)

surveillance equipment. Caggiano obtained $5,500 from Morselli, $3,000 of which he gave to respondent on October 23, 1981. On November 6, Caggiano picked up respondent at an automobile dealership and handed him $12,000 during the ride to the courthouse. Law enforcement officers were monitoring the conversation. Respondent, who placed the money inside his jacket breast pocket, was apprehended and arrested by police immediately after leaving Caggiano's car.

A more complete recitation of these incidents can be found in the Appellate Division opinion, 189 N.J. Super. 273, 281-91. Caggiano has since been disbarred. 108 N.J.L.J. 545 (1981).

itself because it prejudged his guilt.

We know of no doctrine defining what effect must be given in these removal proceedings to the judge's bribery conviction. We are not barred by constitutional law from according it full collateral estoppel consequences. All of the conditions of that doctrine are present (the issues were in fact litigated, the burden of proof is the same, the parties, essentially, are identical). The constitutional restraint, in New Jersey, inhibits the use of collateral estoppel only in subsequent criminal proceedings. State v. Ingenito, 87 N.J. 204, 216-17 (1981). The proceedings here are not criminal. Board of Chosen Freeholders v. Conda, 164 N.J. Super. 386 (Law Div. 1971); accord, e.g., McComb v. Commission on Judicial Performance, 138 Cal. Rptr. 459, 463-65 (Cal. Spec. Trib. 1977).

Nor are we required to accord collateral

estoppel effect to the bribery conviction and the factual determination upon which it was based. Collateral estoppel is not mandated by constitution or statute. Rather it is a doctrine designed to accomplish various goals, a rule not to be applied if there are sufficient countervailing interests. Plainfield v. Public Service Elec. & Gas Co., 82 N.J. 245, 258-59 (1980).

Given the unique nature of these proceedings and their unequalled importance, collateral estoppel's application must depend completely on its consistency with the goals of removal proceedings. In New Jersey, where these proceedings are constitutionally based, and where the Constitution imposes responsibility on the Legislature for both their substance and procedure, N.J. Const. of 1947, art. VI, §§ VI, para. 4, legislative intent on that issue is critical.

The removal statute itself is no help in determining what effect the Legislature intended a criminal conviction to have. Respondent, in support of his contention that this Court must again try these issues, notes that the removal statute permits the issuance of subpoenas to witnesses and the production of evidence at the hearing before the Court or the three-judge panel. Obviously those statutory provisions were designed to allow live testimony where appropriate, but not to compel it where inappropriate. Those provisions are nothing more than the necessary tools to assure production of live testimony when and if required. They tell us nothing except that some removal proceedings may require such testimony. They do not at all suggest that the many rules of evidence used in ordinary trials to dispense with live testimony (through documents or exceptions to the general hear-

say exclusion) are not applicable in these proceedings.

The statute simply does not tell us what effect may be given to the admission in evidence of the judge's conviction. The only section suggestive of a clue -- N.J.S.A. 2A:1B-10 -- is, upon analysis, not helpful at all. That section prohibits a hearing on the removal charge until civil, criminal or administrative proceedings dealing with the same matter have been fully concluded. That prohibition applies only if the proceeding was one in which "the judge had an opportunity to prepare his defense and was entitled to be represented by counsel." Ibid. One implication of the quoted material, along with the prohibition against simultaneous removal proceedings, is that the judge, having had the benefit of counsel, should be bound by the results of those proceedings. Further analysis, however, suggests the contrary.

The burden of proof in removal proceedings is beyond a reasonable doubt. N.J.S.A. 2A:1B-9. The Legislature could not have intended that a judge, held liable in a civil or administrative proceeding under facts found by a preponderance of the evidence, would be foreclosed from challenging those facts in a removal action where the same facts have to be established beyond a reasonable doubt. The judge may, therefore, contest facts in a removal proceeding that were previously found in a civil or administrative proceeding. The section of the statute here involved (N.J.S.A. 2A:1B-10) treats criminal, civil, and administrative proceedings in an identical fashion. We therefore must conclude that the section itself provides no support for the contention that a criminal conviction is conclusive in removal proceedings, since civil or administrative determinations, treated identically in the

statute, could not be given conclusive effect. [6]

Nor does the statute's legislative history provide much help. Article VI, §§ VI, para. 4 of our Constitution delegates to the Legislature the authority to enumerate the causes for which and the manner by which the Supreme Court may remove judges of the Superior Court from office. This legislative power lay unexercised

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6 A somewhat more persuasive contention could be made that the Legislature intended by that section to foreclose removal proceedings where the judge prevailed in the related criminal, civil, or administrative proceeding. While we have no occasion to pass on that issue, we note that there are substantial countervailing policies, i.e., the public's interest in removing a dishonest judge should not be compromised by related civil or administrative proceedings that may have been informal or, perhaps because of lower stakes, less vigorously prosecuted.

from the adoption of the Constitution in 1947 until the enactment of the removal statute in 1970. During the intervening years the procedure for protecting the public from incompetent judges, namely impeachment pursuant to art. VI, §§ VI, para. 4, was regarded as impractical, and loss of judicial office as a result of disbarment (see In re Mattera, 34 N.J. 259, 268-69 (1961) had proven a cumbersome alternative. The disciplinary sanctions available to this Court were widely recognized to be insufficient to the task of maintaining public confidence in the judiciary.

The legislative response pursuant to the constitutional power was provoked in part by the call to provide this Court with a direct vehicle for removing from the bench judges who had engaged in criminal conduct. See "Legislation needed for Judicial Discipline and Removal," 92

N.J.L.J. 336 (1969) (editorial); "Removal of Judges Senate No. 166," 93 N.J.L.J. 52 (1970) (editorial). The procedural particulars, beyond the fundamental parameters such as burden of proof, composition of the tribunal, and respondent's right to have counsel and to offer evidence, left much to the Supreme Court's discretion, both by implication -- by failing to define proceedings in more detailed and restrictive terms -- and explicitly -- by providing that, "[e]xcept as otherwise provided in this act, proceedings shall be governed by rules of the Supreme Court." N.J.S.A. 2A:1B-8.

Removal proceedings are unique. The interests involved are so great that the Legislature required that the matter be heard directly by the Supreme Court or through its designated three-judge panel. No other proceeding is given this primacy. That the interests served by collateral

estoppel (e.g., efficient administration of justice, avoidance of conflicting judicial determinations, avoidance of harassment through repetitive litigation) would also be served is not dispositive of the question. We must satisfy ourselves additionally that the application of collateral estoppel would not compromise the interest of the State in the integrity of these proceedings.

Our conclusion that the criminal conviction here was intended by the Legislature to conclusively establish Judge Coruzzi's guilt is to some extent based on the identical effect given to such convictions in attorney disciplinary matters. Long before the 1970 adoption of the judicial removal statute, the rule was firmly established that the conviction of an attorney conclusively established the underlying facts in disciplinary proceedings. In re Hughes, 90 N.J. 32, 36 (1982); In re

Mirabelli, 79 N.J. 597, 601-02 (1979); In re Mischlich, 60 N.J. 590, 593 (1972); In re Isserman, 9 N.J. 316, 321 (1952), cert. den. sub nom. Isserman v. Ethics Committee, 345 U.S. 927, 97 L.Ed. 1357 (1953). We assume that the Legislature was aware of that fact when it enacted the removal statute. Yanow v. Seven Oaks Park, Inc., 11 N.J. 341, 350 (1953). In the absence of any evidence to the contrary, we also assume that the Legislature intended convictions to have the same effect in judicial removal proceedings which, while unique, are similar in some significant respects to attorney disciplinary proceedings. In both an officer of the law is subject to removal, in both the integrity of the judicial system is at stake, in both the burden of proof exceeds a preponderance of the evidence, and in both the destruction of a professional career is involved. The Legislature, thus charged

with knowledge of the conclusive effect given to criminal convictions in ordinary civil cases and in attorney disciplinary cases, might have contemplated the same effect in judicial removal proceedings.[7]

Considerations of policy greatly strengthen this conclusion concerning legislative intent. Without question, the most significant goal of judicial removal statutes is the preservation of the public's confidence in the judicial system. See In re Spitalnick, 63 N.J. 429, 431-32 (1973); Nicholson v. State Comm'n on Judicial Conduct,

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7 While the burden of proof in attorney disciplinary cases ("clear and convincing") is lower than "beyond a reasonable doubt," the cases do not suggest that the conclusive effect given to convictions is based on a suggested safety margin resulting from that difference. The important consideration is that the binding determination resulted from a trial where the burden was no less than the disciplinary proceeding.

50 N.Y. 2d 597, 608, 409 N.E. 2d 818, 822, 431 N.Y.S. 2d 340, 345 (1980); In re Martin, 295 N.C. 291, _____, 245 S.E. 2d 766, 772 (1978); In re Heuermann, 240 N.W. 2d 603, 608 (S.D. 1976). That confidence is shaken when a judge commits an offense that subjects him or her to removal; the removal proceedings are designed to restore faith. The "acquittal" by this Court of a judge previously convicted by a jury would have a shattering impact on that faith. The incomprehensible scene of a unanimous conviction by twelve of his peers, after a trial in which the judge is afforded every conceivable protection, followed by an acquittal by this Court, perhaps by a 4-3 vote, would overwhelm all attempts at analysis or justification. The niceties of distinctions between a jury and this Court would be totally lost by the public. Nor would matters be helped when our order permitting the resumption of his judicial

functions was delivered to the place where he was serving his prison sentence. The public might conclude that the judge succeeded where he had previously failed because the jury was composed of citizens and the Court composed of judges.

In our view, the Legislature would never countenance even the possibility of such a result. The situation might conceivably be different if some significant new evidence were to be discovered after conviction and after all appeals had been exhausted, or if the underlying proceedings had been clearly contaminated by fraud or criminality on the part of the prosecution, the judge, or the jury, or something of that kind. But there is nothing of that even remotely suggested here. All we have is the contention that, as a matter of law, the statute requires a completely independent proceeding, a full and new trial before the Supreme Court, and, presumably, a

total disregard of the prior conviction by the jury. For the reasons stated above we disagree. In these proceedings, the conviction is conclusive as to guilt and as to all facts on which it is based.[8]

Respondent's contention that this Court should disqualify itself *in toto* requires only a brief response. First of all, we doubt that the New Jersey Constitution in granting the power of removal to "the Supreme Court" (art. VI, § VI, para. 4) intended the power to be exercised by a court composed exclusively of judges of

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8 Obviously we do not intend here to list every conceivable situation where the Court might examine the soundness of the conviction. We note that *In re Isserman*, 35 *N.J.* 198 (1961), is mistakenly cited as authority to re-examine a conviction that led to disbarment. In fact the soundness and basis for that conviction were not re-examined at all, nor was there any suggestion that the conviction there was not conclusive in the disciplinary proceedings. It was the Court's previous value judgment--that such a conviction warranted disbarment--that was reexamined in light of subsequent developments that rendered disbarment unjust.

other courts. We suspect that even if grounds existed for disqualification of the entire Court, the rule of necessity would nevertheless require that the entire Court hear the matter. See Traction Co. v. Board of Public Works, 56 N.J.L. 431, 439-40 (Sup. Ct. 1894); New Jersey State Bar v. New Jersey Ass'n of Realtor Bds., 118 N.J. Super. 203, 209 (Ch. Div. 1972); accord United States v. Will, 449 U.S. 200, 66 L.Ed. 2d 392 (1980).

Furthermore, on the merits, there is absolutely nothing here that would require anyone to be disqualified. Respondent's counsel points to the language of the initial complaint, filed by the Court, which, in conclusory terms, alleges that respondent is guilty of bribery. The difference between such formal allegations contained in a complaint and the assertion of a belief by this Court or any of its members in the facts alleged is too

obvious to require further comment. This Court prejudged nothing about respondent. We simply reacted, and appropriately we believe, to matters brought to our attention that in our judgment, called for the institution of removal proceedings. The removal statute explicitly authorizes such action. N.J.S.A. 2A:1B-3.

The remaining contention of respondent is that one or more members of the Court, perhaps all -- the contention is not that specific -- should be disqualified for having in some way participated in the prosecution of respondent. His contention rests on his unsupported belief that evidence of Court involvement in his prosecution will turn up, creating an improper appearance of partiality. This proposition is too tenuous to warrant disqualification. Discovery is sought on this issue, the only complaint being that such discovery has been denied the respondent. But

no such denial ever occurred, since no such request for discovery was ever made. The first occasion on which it is suggested that such discovery is needed is found in respondent's brief before this Court. That is obviously neither the right time nor place to initiate such a request. Furthermore, where discovery is sought of those holding high office, there must be, at the very least, a solid showing of the need for and relevance of the predicted testimony. Hyland v. Smollok, 137 N.J. Super. 456 (App. Div. 1975) (request to depose Attorney General denied, absent showing that Attorney General had relevant knowledge and that deposition was essential to prevent injustice).

A claim based on the denial of discovery must indicate the matter which the applicant hopes will be developed. Here we have nothing more than the general

assertion of some kind of involvement in the prosecution.[9]

The Statutory Amendment

As noted above, Judge Coruzzi has been suspended without pay since the commencement of the removal proceedings. When those proceedings were instituted, the statute authorizing them allowed for withholding of pay for a period not to exceed 90 days. The legislative intent in imposing that 90-day limitation is not known. It may have reflected a mistaken belief that removal proceedings would be

9 We recognize that a decision to deny discovery regarding alleged involvement of this Court, based on our assessment of its importance to prevent injustice, may have the ring of an ipse dixit. However, the same is true of all recusal decisions--ultimately, the Court's honesty and integrity in exercising its discretion must be trusted.

concluded within the 90-day period; however, it is most unlikely that removal proceedings would be that short.[10] The Legislature never intended to allow the Court to suspend the judge without pay, presumably contemplating a situation where the judge's conduct was so bad and the probability of conviction sufficiently strong to warrant this extreme temporary remedy of withholding pay, only to have pay restored long before it was even possible that the judge would be exonerated. At the commencement of the removal proceedings, therefore, the 90-day limita-

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10 Removal proceedings, if commenced after a judge's conviction, would take much less time than they did here, where they were commenced one day after arrest. Even then, however, 90 days would not be enough. Presumably suspension without pay would occur immediately upon conviction. Since the appellate process would take much more than 90 days, even this procedural change, which would lead to the least period of time being taken in the removal proceedings, would still result in proceedings far in excess of 90 days.

tion seemed incongruous, and we have learned nothing that would explain away its apparent inappropriateness.

The Legislature, aware of the Coruzzi arrest and the commencement of removal proceedings, amended the statute to allow for the indefinite withholding of pay pending removal proceedings, and did so before the expiration of the 90-day suspension in this case. Respondent argues that since at the time of the offense, or perhaps at the time of the commencement of the removal proceedings (and at one point it is even suggested that the critical moment was when Judge Coruzzi became a judge), withholding of pay was limited to 90 days, that limitation somehow was a right of Judge Coruzzi, a vested interest, a condition of his position that could not be changed, and certainly not at a time when he had already become subject to removal proceedings. The legal contention is that where such amendment was aimed

specifically at him, it constituted either an ex post facto law, a bill of attainder, or an impermissible impairment of contract.

The fact that a law is triggered by a specific event, the fact that the Legislature realizes the law will apply to that event as well as the persons involved in it, certainly does not--or should not--affect the validity of legislation. A significant portion of all laws and amendments passed by a legislature have their origin in just such specific circumstances. Anti-pollution laws are sometimes passed not in response to some theoretical state of affairs, but to pollution from a particular factory; workers' compensation laws result not from some generalized enlightened ideal but rather from observing the plight of worker after worker, particular people, being injured at particular factories and going without fair or expeditious compensation. And

these laws do not always get amended as a result of academic speculation concerning their adequacy but rather from experience with a particular situation that demonstrates their inadequacy. If legislation triggered by a particular situation clearly requiring a legislative remedy is invalid for that reason, the law would be helpless to address many societal needs.

Here the Legislature undoubtedly learned from the Coruzzi arrest and removal proceedings that it had made inadequate provisions for withholding pay of a suspended judge.[11] Without doubt Judge Coruzzi was one object of its attention; without doubt it did not want Judge Coruzzi to be paid until the removal proceedings were concluded; but equally without doubt its in-

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11 At the request of the Court, the Administrative Office of the Courts advised the appropriate legislators of the problem.

tention was to assure that any judge and all judges who were the subject of removal proceedings might, in appropriate situations, be suspended without pay indefinitely pending the completion of those removal proceedings.

What conceivable interest is served by limiting this otherwise obviously legitimate legislative power and preventing it from applying to the very situation that called the Legislature's attention to the statute's inadequacy? Was there some reliance on the statute by Judge Coruzzi when he accepted a bribe? Did he have some legitimate expectation that no one could relieve him of pay for more than 90 days if he were caught? And if there were any such expectation or reliance, what legitimate interest would be served by honoring it? While the constitutional prohibition of ex post facto laws is treated hereafter, it should here be

noted that the true source for that prohibition is the strong and universally accepted notion that a fair and just society cannot make criminal an act that was innocent when it occurred nor, if criminal when it occurred, impose punishment in excess of that called for when it occurred. But removal is not punishment for a crime, nor is suspension, nor is the withholding of pay. The purpose of the removal proceedings, and all related aspects of those proceedings, is to regulate the judiciary, to protect the public from dishonest judges, to prevent proven dishonest judges from doing further damage, and above all to assure the public that the judiciary is worthy of its trust. That purpose, clearly regulatory, is achieved not only by the removal proceeding itself, but also by the immediate suspension of the judge without pay. Were pay to be resumed before the removal proceedings

were completed, public confidence in the judiciary would without doubt be weakened.

These considerations suggest the legitimacy of the legislative action, and an analysis of the constitutional objections raised by respondent confirms that legitimacy. Article I, §§ 10, cl. 1 of the United States Constitution prohibits states from enacting ex post facto laws.[12] N.J. Const. of 1947, art. IV, §§ VII, para. 3 imposes a similar prohibition.[13]

The essence of the prohibitions is to

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12 "No state shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts ...." U.S. Const. art. I, § 10, cl. 1.

13 "The Legislature shall not pass any bill of attainder, ex post facto law or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." N.J. Const. of 1947, art. IV, § VII, para. 3.

forbid states to enact any law that imposes a punishment for an act that was not punishable at the time it was committed, or that imposes additional punishment to that then prescribed. Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 325-26 (1867). This bar applies only to statutes that are by their nature penal. Id., accord Bonney v. Collector of Bridgewater, 31 N.J.L. 133 (Sup. Ct. 1864). But if the restriction of the individual occurs as an incident of the regulation of a present situation, it is not an ex post facto law. DeVeau v. Braisted, 363 U.S. 144, 160, 4 L.Ed. 2d 1109, 1120 (1960).

There is strong support for the proposition that the purpose of judicial disciplinary and removal proceedings is not penal. See, e.g., McComb v. Commission on Judicial Performance, supra, 138 Cal. Rptr. at 463-65. Indeed, respondent concedes that the statute, including the con-

troversial amendment, is regulatory in its effect as to future employees. However, he ignores the purpose of the statute and emphasized only its effect on him -- that it operates to deprive him of his salary.

This analysis misses the mark.

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualification for a profession.
>
> [DeVeau v. Braisted, 363 U.S. 144; 160, 4 L. Ed. 2d 1109, 1120 (1960)].

One does not have a constitutional right not to be subject to a law if its effect might be called punitive. The Constitution only provides that when a statute engenders unpleasant consequences for an individual because of a past act, punishment cannot be the purpose of a statute. The appro-

priate focus is not simply the effect on the individual challenging the statute but also other potential or intended objects of the law's operation to determine if the challenged restriction serves a valid regulatory purpose.

The regulatory purpose that L. 1981, c. 522 serves is evident: it helps the Supreme Court to preserve public confidence in the judiciary by not allocating public funds to pay salary to members of the judiciary who have conducted themselves in a manner that warrants suspension. Equally in its application to respondent based on his acts prior to the law's passage as in its potential application to others in the future, the law advances this goal. That preservation of public confidence is a valid and important aspect of the regulation of the judiciary. See In re Spitalnick, 63 N.J. at 431-32. Judge Brotman considered this point in reaching

his conclusion that the amendment was not an ex post facto law:

> Maintenance of the standards of the profession and protection of the public are the essential characteristics of the legislation in question. These are regulatory in nature and the deprivation of salary inflicted on plaintiff as a result was but a necessary concomitant of the effective operation of this regulatory system.
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> [Coruzzi v. New Jersey, No. 82-535 (May 13, 1982), slip op. at 4] .

L. 1981, c. 522 was enacted with a legitimate regulatory purpose and is therefore not an ex post facto law.

The second of respondent's constitutional claims is that L. 1981, c. 522 is a bill of attainder in violation of the United States and New Jersey Constitutions.[14] A bill of attainder is a legislative act which levies punishment against specified individuals or groups without judicial trial. United States v. Brown, 381 U.S.

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14 See supra at _____ nn. 12-13 (slip op. at 25 nn. 12-13).

437, 448-49, 14 L.Ed. 2d 484, 492 (1965); United States v. Lovett, 328 U.S. 303, 315, 90 L.Ed. 1252, 1259 (1946); In re Disciplinary Proceedings Against C. Schmidt & Sons, Inc., 79 N.J. 344, 356-57 (1979).

The substitution of a legislative determination of guilt for a judicial one is the distinguishing feature of a bill of attainder. In re Disciplinary Proceedings against Schmidt, 79 N.J. at 356, citing DeVeau v. Braisted, 363 U.S. at 160, 4 L.Ed. 2d at 1120. An amendment that does no more than permit the Supreme Court to continue to withhold judges' salaries pending completion of removal actions (beyond the 90-day period already authorized) hardly meets the description of a legislative determination of a person's guilt. The amendment to N.J.S.A. 2A:1B-5 permits extension of a temporary deprivation only and in no way supplants

the proceeding for ultimate determination of a judge's suitability for office or presupposes guilt.

The amendment is instrumental to preserve public confidence regardless of whether the judge is ultimately found fit for office.[15] The law's valid regulatory purpose and the lack of punitive purpose accompanying its enactment rebut inferences essential to sustain respondent's bill of attainder claim. Nixon v. Administrator of Gen'l Serv., 433 U.S. 425, 475-76, 53 L.Ed. 2d 867-68 (1977); In re Disciplinary Proceedings against Schmidt, supra, 79 N.J. at 355. While it is obvious that Judge Coruzzi's arrest brought to the Legislature's attention the effect of the 90-day proviso in N.J.S.A. 2A:1B-5, this catalytic role

15 If the removal charges are not sustained, the judge would presumably be entitled to back pay.

does not make the law constitutionally infirm. There can be no doubt that "a law of general applicability is not unconstitutional merely because its enactment was inspired by a specific example of the evil which it seeks to suppress." Collins v. Smith, 447 F.Supp. 676, 682 n. 4 (N.D. Ill.) (dictum), aff'd 578 F. 2d 1197 (7th Cir.), cert. den., 439 U.S. 916, 58 L.Ed. 2d 263 (1978).

The third constitutional violation claimed by respondent is that the amendment of N.J.S.A.2A:1B-5 impairs an obligation of contract. U.S. Const. art I, § 10, cl. 1; N.J. Const. of 1947, art. IV, § VII, para. 3.[16] Respondent argues that he has a "contractual" right to receive salary while suspended after 90 days without pay. This right, he asserts,

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16 See supra at _____ nn. 12-13 (slip op. at 25 nn. 12-13).

was endowed by N.J.S.A.2A:1B-5 and was subsequently impaired by the amendment of that statute.

It is well established that public officers do not have "contractual" rights to specific terms of compensation and employment within the meaning of the Contract Clause. Butler v. Pennsylvania, 51 U.S. 402, 13 L.Ed. 472 (1850); Springfield v. Pederson, 73 N.J. 1, 5 (1977). This rule has been applied specifically to judicial office. Kenny v. Hudspeth, 59 N.J.L. 320, 322 (Sup. Ct.) aff'd, 59 N.J.L. 504 (E. & A. 1897); Kingston v. McLaughlin, 359 F. Supp. 25, 29 (D. Mass. 1972), aff'd, 411 U.S. 923, 36 L.Ed. 2d 388 (1973).

Further, the Constitution bars only impairments that are severe and are not reasonably necessary to serve important public purposes. Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 57

L.Ed. 2d 727 (1978); United States Trust Co. v. New Jersey, 431 U.S. 1, 52 L.Ed. 2d 92 (1977); Fidelity Union Trust Co. v. New Jersey Hwy. Auth., 85 N.J. 277, 288, app. dism., 454 U.S. 804, 70 L.Ed. 2d 73 (1981).

We need not expound again in the importance of the purpose served by the amendment of N.J.S.A. 2A:1B-5 in order to support our conclusion that the law does not unconstitutionally impair any contractual right of respondent.

Conclusion

We rule that the statutory amendment is valid. Furthermore, we find beyond a reasonable doubt that Judge Coruzzi engaged in misconduct in office. We therefore remove him from office effective immediately. He shall not hereafter hold judicial office.

Justices Clifford, Schreiber, Handler, Pollock, O'Hern and Garibaldi join in this opinion.

SUPREME COURT OF NEW JERSEY
D2 September Term 1983

IN THE MATTER OF

PETER J. CORUZZI,

Judge of the Superior
Court of New Jersey

TO: STEPHEN W. TOWNSEND, Clerk
Supreme Court of New Jersey
State House Annex
Trenton, New Jersey 08625

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Peter J. Coruzzi, the appellant, hereby appeals to the Supreme Court of the United States from that portion of the Final Judgment of the Supreme Court of New Jersey which upheld the Constitutional validity of N.J.S.A.2A:1B-5. The Judgment in this action was entered on March 20, 1984.

This Appeal is taken pursuant to 28 U.S.C. § 1257 (2).

By: LARIO AND NARDI

Dated: May 9, 1984

FRANK M. LARIO, JR.
200 Haddon Avenue
P.O. Box 87
Haddonfield, N.J. 08033
(609)795-4540

CERTIFICATION OF SERVICE

I hereby certify that one copy of this Notice of Appeal To The Supreme Court Of The United States was mailed on this date, by first class mail, postage prepaid to all parties listed below:

IRWIN I. KIMMELMAN, Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN 116
Trenton, New Jersey 08625

STEPHEN W. TOWNSEND, Clerk
Supreme Court of New Jersey
State House Annex
Trenton, New Jersey 08625

ROGER A. LOWENSTEIN, ESQUIRE
SANDLER, BROCHIN, KOHL, FISHER, BOYLAN & MEANOR
65 Livingston Avenue
Roseland, New Jersey 07068

I further certify that all parties to be served with this Notice of Appeal have been served.

BY: LARIO AND NARDI

FRANK M. LARIO, JR.
200 Haddon Avenue
P.O. Box 87
Haddonfield, N.J. 08033
(609)795-4540

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PETER J. CORUZZI, J.S.C.,	:	
Plaintiff,	:	
vs.	:	Civil Action No. 82-535
THE STATE OF NEW JERSEY AND THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE STATE OF NEW JERSEY, jointly and severally,	:	OPINION
Defendants.	:	

APPEARANCES:

David A. Luthman, Esquire
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Attorney for Plaintiff

Irwin I. Kimmelman, Attorney General
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By: Jonathan L. Williams, Deputy
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Trenton, NJ 08625
Attorneys for Defendants

BROTMAN, District Judge

This civil rights action comes before the court on cross-motions for summary judgment. Plaintiff is a judge of the Superior Court of New Jersey. In November

of 1981 he was arrested and indicted for bribery and misconduct in office. On November 10, 1981, the Supreme Court of New Jersey initiated removal proceedings against plaintiff, pursuant to N.J. Stat. Ann. § 2A:1B-1 et seq. (West Supp. 1981). Plaintiff was suspended without pay pending the conclusion of the removal proceedings. Plaintiff's Exhibit B. At the time of this suspension, the relevant statutory provision read: "The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding; provided, however, that a judge shall receive pay for the period of suspension exceeding 90 days." N.J. Stat. Ann. § 2A:1B-5 (West Supp. 1981). In December, 1981, the state legislature considered and passed an amendment to the statutory provision quoted, which amendment deleted the proviso limiting suspension without

pay to a ninety-day period. This amendment was signed into law on January 12, 1982. (L. 1981, C. 522).

The bill as introduced included a statement explaining that "Presently, the Supreme Court may suspend a judge accused of wrongdoing from office without pay for a period of 90 days pending determination of the charges. This bill would allow this period to be increased indefinitely at the discretion of the Supreme Court." S. No. 3517, Defendants' Ex. F-1. In accordance with the new statute, plaintiff's salary was not resumed at the expiration of ninety days. Plaintiff's Exhibit A to Supplemental Brief. Plaintiff filed this action on February 23, 1982, seeking a declaration that the new statute, as applied to him, violates the constitutional bans on ex post facto laws and bills of attainder. U.S. Const., Art I, § 10, cl. 1. The parties filed cross-motions

for summary judgment. Shortly before the motions were argued, plaintiff was found guilty after a trial by jury of the offenses of misconduct, bribery and conspiracy. The removal proceedings are still pending.

Defendants raise a number of jurisdictional and procedural arguments in support of their motion for summary judgment. In our opinion, none of these are dispositive. First, defendants point out that plaintiff failed to sue the proper parties under 42 U.S.C. § 1983. While defendants are surely correct that the complaint should have named a person or persons rather than the state and an agency of the state, this error can be cured by amendment. As we would permit plaintiff to amend the complaint, we decline to decide the motion on this ground. Second, defendants argue that plaintiff's request for retroactive payment of salary allegedly

accruing since February 9, 1982, is barred by the sovereign immunity doctrine embodied in the Eleventh Amendment. Plaintiff conceded this point at oral argument and has limited his action to a demand for declaratory and prospective relief. Therefore, there is no longer any dispute on this issue and we need not address it. Third, defendants argue that the abstention doctrines dictate that the instant action be dismissed. Defendants suggest that every branch of abstention -- Pullman, Burford, Younger and Colorado River -- applies to this case. See Railroad Comm'n v. Pullman, 312 U.S. 496 (1941); Burford v. Sun Oil Co., 319 U.S. 315 (1943); Younger v. Harris, 401 U.S. 37 (1971); Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). Without prolonged discussion, we will simply note that we consider none of these cases controlling in

the instant case and will proceed to address the merits of the constitutional questions presented.

The ex post facto prohibition of Article I, Section 10, forbids the States to enact any law "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 325-26 (1867). See Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798). Plaintiff argues that the change from a ninety-day period of suspension without pay to an indefinite period of suspension without pay enhances the penalty for acts committed prior to the change.

Defendants' position is that the amendment does not impose a "penalty" at all; that the law is not penal or criminal in nature, and is therefore completely out-

side the concerns of the ex post facto ban.

Plaintiff responds that the deprivation of salary pending removal is a novel punishment, but a punishment nevertheless. Plaintiff refers the court to two cases as examples of civil deprivations imposed for punitive reasons which have been held to fall under the ban. These cases are Hiss v. Hampton, 338 F. Supp. 1141 (D.D.C. 1972) and Burello v. State Emp. Retire. System, 49 Pa. Commw. Ct. 364, 411 A.2d 852 (1980). Plaintiff focuses not on the general purpose of the legislation but on the effect of its enactment on plaintiff. The instant application of the statute, plaintiff argues, is punitive only and serves no regulatory goal. In the cases relied upon by plaintiff, the courts emphasized a lack of regulatory purpose. "Retroactive punishment of former employees for their

past misdoings has no reasonable bearing upon the regulation of the conduct of those presently employed." Hiss, 338 F. Supp. at 1148. "The particular vice [of the statute is that] it was enacted after the conclusion of the performance of the public service which it sought to purify. Hence it is clear that its purpose was not purification -- that is, regulation -- but punishment." Burello, 49 Pa. Commw. Ct. at 371. The landmark ex post facto clause cases of the post-Civil War era also involved impositions of civil disabilities as a form of punishment for past conduct. Cummings v. Missouri, 71 U.S. 277 (1867) (license to become minister); Ex parte Garland, 71 U.S. 333 (1867) (admission of lawyer to Supreme Court bar).

Defendants suggest that the presence of a non-punitive, regulatory purpose distinguishes the instant case from those cited. The state relies on DeVeau v. Brai-

sted, 363 U.S. 144 (1960) and Hawker v. New York, 170 U.S. 189 (1898). In DeVeau a statute disqualified a union from collecting union dues if any union officer was a convicted felon. The statute was held not to violate the ex post facto ban even when applied against persons convicted prior to its passage. The Court observed, "The question in each case where unpleasant circumstances are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to the regulation of a present situation, such as the proper qualifications for a profession." 363 U.S. at 160. In Hawker, the state was permitted to apply a statute barring convicted felons from the practice of medicine to a person convicted prior to the passage of the statute. To the same effect as

Hawker are Reetz v. Michigan, 188 U.S. 505 (1903); Dent v. West Virginia, 129 U.S. 114 (1889); and Butcher v. Maybury, 8 F.2d 155 (W.D. Wash. 1925).

Defendants have also pointed out a number of recent cases in the field of judicial disciplinary proceedings where ex post facto claims were rejected on the ground that such proceedings, and sanctions thereunder, are not penal in character. Matter of Seraphim, 97 Wis.2d 485, 294 N.W.2d. 485 at 490-91 and n. 3 (1980); In re Inquiry Concerning a Judge, 357 So.2d 172 at 180-81 (Fla. Sup. Ct. 1978); Nicholson v. Jud. Ret. and Removal Com'n., 562 S.W.2d 306 at 308 (Ky. Sup. Ct. 1978). See In re Diener, 268 Md. 659, 304 A.2d 587 at 594, 596-97 (1973); In re Kelly, 238 So.2d 65 at 569 (Fla. Sup. Ct. 1970). See also Napolitano v. Ward, 457 F.2d 279, 284 (7th Cir.), cert. denied. 409 U.S. 1037 (1972) (Judicial

removal proceedings, because not penal, are not barred by grant of immunity from prosecution). These courts focused on the primary goals of judicial suspension and removal legislation as the maintenance of the dignity and quality of the judiciary, and the protection of the administration of justice. The removal or suspension of a judge is undertaken not to punish the individual -- that function is carried out by the criminal justice system -- but to protect the public. Cf. Galvan v. Press, 347 U.S. 522, 531 (1954) (ex post facto ban not applicable in deportation context because not penal in character); Harisiades v. Shaughnessy, 342 U.S. 580, 594-95 (1952) (same).

Upon consideration of the caselaw, we have concluded that the instant legislation does not violate the ex post facto ban. The statute in question is not penal in nature, even though it does entail an

incidental civil deprivation -- the loss of salary pending a final determination. The cases relied upon by plaintiff do not persuade us to the contrary. In Hiss, there was extensive legislative history which manifested an overriding purpose of punishing the plaintiff, Alger Hiss. While the courts in Hiss and Burello concluded that the statutes in question could have no regulatory effect today or in the future, we do not believe that the deterrent value of the legislation was sufficiently considered. The question is not simply whether the legislation will have a regulatory effect on the individual involved, for the answer to that question will always be no. The issue is whether it will serve a deterrent purpose for other employees in the present. Furthermore, the element of professional standards safeguarded by judicial disciplinary proceedings is at the heart of the

instant legislation, but was absent in Hiss and Burello. This element was the key to cases like DeVeau and Hawker, as well as the multitude of state court cases dealing specifically with removal and suspension of judges. Maintenance of the standards of the profession and protection of the public are the essential characteristics of the legislation in question. These are regulatory in nature and the deprivation of salary inflicted on plaintiff as a result was but a necessary concomitant of the effective operation of this regulatory system.

The next question presented is whether the legislation constituted an impermissible bill of attainder. A bill of attainder is a legislative act which levies punishment against specified individuals or groups of individuals without a judicial trial. See United States v. Brown, 381 U.S. 437 (1965); United States v. Lovett,

328 U.S. 303 (1946); Cummings v. Missouri, 71 U.S. at 323. A bill of attainder is penal, not regulatory, in nature. The critical aspect of punitive purpose was highlighted in Nixon v. Administrator of General Services, 433 U.S. 425, 468-84 (1977). There, Congress required Nixon to relinquish Presidential papers and tapes to the custody of the General Services Administration. The Court analyzed the function of the legislation and asked whether it "reasonably can be said to further nonpunitive legislative purposes." Id. at 476. If so, the statute is not a bill of attainder. For the reasons given in connection with the ex post facto claim above, we believe the statute here does serve nonpunitive, regulatory purposes, and is accordingly not a bill of attainder.

Plaintiff would have the court infer from the timing of the statute's amendment that the legislature intended solely to

punish plaintiff by its passage. But a law of general applicability is not an unconstitutional bill of attainder merely because its enactment was inspired by a specific example of the evil which it seeks to suppress. See Collins v. Smith, 447 F. Supp. 676, 682 n. 4 (N.D. Ill.), aff'd, 578 F.2d 1197 (7th Cir.), cert. denied. 439 U.S. 916 (1978). This law is one of general applicability. The fact that Plaintiff was the first person to whom it has been applied does not make it any less general. An aspect of the suspension procedure that the legislature deemed ill-advised was brought to light by plaintiff's circumstances. Plaintiff is the first person against whom the suspension procedure has been employed. The revision of the section in question was not designed specifically to punish plaintiff, but to improve the regulatory scheme. As Justice Frankfurter observed, "The

fact that harm is inflicted by governmental authority does not make it punishment. Figuratively speaking all discomforting action may be deemed punishment because it deprives of what otherwise would be enjoyed. But there may be reasons other than punitive for such deprivation." United States v. Lovett, 328 U.S. at 324 (concurring opinion). Because we find that the instant legislation was not punitive, we conclude that it is not an unconstitutional bill of attainder.

For the reasons stated, defendants' motion for summary judgment is granted, and plaintiff's motion for summary judgment is denied.

/s/ Stanley S. Brotman
STANLEY S. BROTMAN
United States District
Judge

Dated: May 13, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PETER J. CORUZZI, J.S.C., Plaintiff vs.	:	Civil Action No. 82-535
THE STATE OF NEW JERSEY AND THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE STATE OF NEW JERSEY, jointly and severally, Defendants.	:	O R D E R

This matter having been opened to the court on the 2nd day of April, 1982; and

The court having considered the briefs, exhibits, and oral argument; and

For the reasons stated in the court's opinion filed this date,

It is on this 13th day of May, 1982, hereby ORDERED that plaintiff's motion for summary judgment in his favor is denied; and

It is FURTHER ORDERED that defendants' motion for summary judgment in their favor is granted.

No costs.

/s/ Stanley S. Brotman
STANLEY S. BROTMAN
United States District
Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5364

PETER J. CORUZZI

Appellant

v.

STATE OF NEW JERSEY,
ADMINISTRATIVE OFFICE OF THE
STATE OF NEW JERSEY

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civ. No. 82-535)

Submitted Under Third Circuit Rule 12(6)
March 7, 1983

Before: SEITZ, *Chief Judge*, HIGGINBOTHAM and
SLOVITER, *Circuit Judges*

(Filed April 22, 1983)

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OPINION OF THE COURT

SEITZ, *Chief Judge*.

Peter Coruzzi appeals an order of the district court granting summary judgment to defendants in his civil rights action brought under 42 U.S.C. §§1983 and 1985 (1976). This court has jurisdiction under 28 U.S.C. §1291 (1976).

I.

On November 10, 1981 the Supreme Court of New Jersey initiated removal proceedings under N.J. Stat. Ann. §2A: 1B-1 *et. seq.* (West Supp. 1981) against appellant Peter Coruzzi, a Judge of the Superior Court of New Jersey. The removal proceedings were based on his arrest by state law enforcement officials on criminal charges involving bribery and misconduct in office.

On the same date, the Supreme Court of New Jersey also ordered Coruzzi's suspension from office without pay pursuant to N.J. Stat. Ann. §2A: 1B-5 (West Supp. 1981). At the time of his suspension, this provision read as follows: "The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding; provided, however, that a judge shall receive pay for the period of suspension exceeding 90 days." *Id.* The New Jersey Supreme Court's suspension order provided that "Peter J. Coruzzi may move before this Court for modification of any portion of this order upon five [5] days notice to the Attorney General or his representative. . ."

In December, 1981 the New Jersey Legislature amended section 2A: 1B-5 by deleting the proviso limiting suspension without pay to a ninety-day period. The legislative history of the amendment explains that the New Jersey Legislature intended the change "to allow [the period of suspension without pay] to be increased

indefinitely at the discretion of the Supreme Court." S. No. 3517 at 88 (Dec. 10, 1981).

In accordance with the statutory revision, Coruzzi's salary was not resumed at the expiration of ninety days. Coruzzi thereafter filed this suit under 42 U.S.C. §§1983 and 1985, seeking (1) a declaratory judgment that the December, 1981 statutory revision is unconstitutional either as a bill of attainder or as an ex post facto law, (2) an injunction reinstating his pay as of February 9, 1982 and (3) interest and counsel fees. He named as defendants the State of New Jersey and the Administrative Office of the Courts of New Jersey.

Upon cross-motions for summary judgment, the district court entered a judgment for defendants. The court held that the December, 1981 statutory revision was not an ex post facto law because it was regulatory in nature rather than penal. The court also held that the statutory revision was not a bill of attainder because of its general applicability. Coruzzi appeals both of these rulings. The removal proceedings against Coruzzi have been stayed pending an appeal of his criminal conviction to the Supreme Court of New Jersey.[1]

II.

In addition to defending the constitutionality of N.J. Stat. Ann. §2A: 1B-5, appellees also urged the district court to abstain from reaching the merits of Coruzzi's federal constitutional claims under the equitable restraint doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny. The district court, without any

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1. The removal proceeding was stayed pursuant to N.J. Stat. Ann. §2A: 1B-10, which provides that "[n]o hearing to remove a judge from office as provided for in this act shall be held until the cause for suspension, if the cause is a result of an independent civil, criminal or administrative action against the judge, is finally decided in a tribunal in which the judge had an opportunity to prepare his defense and was entitled to be represented by counsel."

explanation, stated that it did not consider *Younger* controlling.

The *Younger* abstention doctrine rests on a strong federal policy of noninterference with pending state judicial proceedings. *Middlesex County Ethics Commission v. Garden State Bar Association*, 102 S. Ct. 2515, 2521 (1982). Traditional principles of equity as well as federal-state comity demand that, "except in carefully circumscribed situations, the federal courts should not disrupt an ongoing state judicial process, either by preempting the adjudication of claims that could be brought to the state forum, by directing the state court to stay its proceedings, or by directly interfering in other ways with the natural course of state adjudication." *In re Grand Jury Proceedings* (Wright II), 654 F.2d 268, 279 (3d Cir.), *cert. denied*, 454 U.S. 1098 (1981).

In *Middlesex County*, the Supreme Court recently set forth a three part analysis for determining whether a federal court should abstain from interfering in state judicial proceedings. First, there must be an ongoing state judicial proceeding. Second, the proceeding must implicate important state interests. Third, there must be an opportunity in the state proceeding to raise the federal constitutional challenge. 102 S. Ct. at 2522.

A.

As previouslv noted, the New Jersey removal proceeding against Coruzzi has been stayed pending the final resolution of the criminal charges against him. The suspension of Coruzzi from office without pay, an integral part of this proceeding, is "pending" for purposes of the *Younger* doctrine because the Supreme Court's order permits Coruzzi to move for modification of the terms of his suspension during the pendency of his removal proceeding. *See Trainor v. Hernandez*, 431 U.S. 434, 446 n.9 (1976) (attachment proceeding "pending" in state courts within meaning of *Younger* doctrine be-

cause attachment contained return date on which parties would have had opportunity to contest validity of attachment in court).

Moreover, we believe the New Jersey removal proceeding against Coruzzi is "judicial" for *Younger* purposes, since it bears several of the traditional indicia of a judicial action. For example, the New Jersey Supreme Court initiated the removal proceeding against Coruzzi by filing a complaint pursuant to N.J. Stat. Ann. §2A: 1-B-3. *See Middlesex County Ethics Committee v. Garden State Bar Association,* 102 S. Ct. at 2522 (state bar disciplinary action judicial because, among other reasons, initiated by filing complaint with ethics and grievance committee). In addition, judicial removal proceedings are governed in New Jersey by the rules of the Supreme Court of that state, N.J. Stat. Ann. §2A:1B-8, and the Supreme Court must find cause for removal "beyond a reasonable doubt". N.J. Stat. Ann. §2A: 1B-9.

Also, the removal proceeding against Coruzzi is adjudicative in nature because it requires the New Jersey Supreme Court to "investigate, declare, and enforce 'liabilities as they [stood] on present or past facts and under laws supposed already to exist.' " *District of Columbia Court of Appeals v. Feldman,* ____ U.S. ____, 51 U.S.L.W. 4285, 4290 (U.S. March 22, 1983) (quoting *Prentis v. Atlantic Coast Line,* 211 U.S. 210, 226 (1908)); *see Williams v. Red Bank Board of Education,* 662 F.2d 1008, 1017-20 (3d Cir. 1981) (*Younger* bars federal court intervention into state administrative proceedings if proceedings are adjudicative in nature and implicate important state interests).

B.

The judicial removal and suspension proceedings against Coruzzi implicate New Jersey's interests in regulating the conduct of the members of its judiciary, and in preserving the integrity of the state's judicial branch.

The Supreme Court of New Jersey has actively pursued these interests by adopting the Code of Judicial Conduct of the American Bar Association. New Jersey Supreme Court Rule 1:14. The adoption of Canon 1 of the Code, which provides that "[a]n independent and honorable judiciary is indispensible to justice in our society," demonstrates the New Jersey Supreme Court's concern about the integrity of the judiciary. Likewise, the adoption of Canon 2, which requires a judge to avoid even the appearance of impropriety in all his activities, indicates its desire to regulate the conduct of the members of its judiciary.

In *Middlesex County*, the United States Supreme Court held that New Jersey "has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses." 102 S. Ct. at 2522-23. Surely New Jersey's interests in assuring the ethical conduct of its judges and in maintaining the integrity of its judiciary are no less significant. Yet, granting the injunction requested by Coruzzi would substantially interfere with the state's pursuit of these interests via a removal proceeding accompanied by a suspension without pay, by preempting the adjudication of a claim which could have been raised in that proceeding. *In re Grand Jury Proceeding* (Wright II), 654 F.2d at 279; *see Moore v. Sims*, 442 U.S. 415, 431 (1978) (abstention under *Younger* required when federal court injunction would hold unconstitutional state temporary removal of child from parents in context of permanent child custody proceeding); *Trainor v. Hernandez*, 431 U.S. at 446 n.9 (abstention under *Younger* required because federal court injunction would hold unconstitutional state pre-trial attachment of defendant's assets in context of state civil proceeding to recoup wrongfully received welfare benefits); *State of New Jersey v. Chesimard*, 555 F.2d 63, 68 (3d Cir. 1977) (in banc) (abstention necessary under *Younger* even though federal court injunc-

tion requiring that state trial not be held on Fridays in deference to religious beliefs of defendants would not substantially interfere with state criminal proceeding; abstention appropriate because injunction has reference to ongoing state proceeding, and would unnecessarily displace state supreme court's role in supervising conduct of trials in state courts).

C.

Finally, we are not persuaded that New Jersey has not afforded Coruzzi an adequate opportunity to raise his federal constitutional claims in the Supreme Court's judicial removal proceeding. *See Middlesex County Ethics Committee v. Garden State Bar Association,* 102 S. Ct. at 2523. By its terms, the New Jersey Supreme Court's suspension order provides that Coruzzi may move the Court for modification of any portion of its order. Thus, instead of filing this civil rights action, Coruzzi could have requested the New Jersey Supreme Court to modify its order to reinstate his pay.

Significantly, the New Jersey Supreme Court's suspension order does not limit the grounds upon which Coruzzi might have relied in requesting such a modification. For this Court to assume that the New Jersey Supreme Court would bar Coruzzi from raising his constitutional claims would reflect negatively on the state's willingness to enforce federal constitutional principles. Avoiding just such an intimation, however, lies at the heart of the *Younger* doctrine. *Steffel v. Thompson,* 415 U.S. 452, 460-61, 462 (1974).

III.

Despite the ability and opportunity to raise his federal constitutional claims in the New Jersey removal proceeding, Coruzzi has not done so. Therefore, we will affirm the judgment of the district court dismissing

Coruzzi's civil rights action on the ground that the court should have abstained under *Younger*. Because of our disposition of this appeal, we express no opinion on the merits of the constitutional arguments raised by Coruzzi. Similarly, we need not address appellees' contentions that abstention is required under *Railroad Commission of Texas v. Pullman*, 312 U.S. 496 (1941), or *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

(A.O. U. S. Courts, The Legal Intelligencer, Phila., Pa.)

APPENDIX D

ARTICLE I, Section 9 (3):

No Bill of Attainder or ex post facto law shall be passed.

ARTICLE I, Section 10 (1):

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. (emphasis added)

2A:1B-1. Definitions.

"Judge as used herein means any judge of the superior court, county court, county district court, juvenile and domestic relations court and municipal court.

2A:1B-2. Cause for removal.

A judge may be removed from office by the Supreme Court for misconduct in office, willful neglect of duty, or other conduct evidencing unfitness for judicial office, or for incompetence.

2A:1B-3. Institution of removal proceedings.

A proceeding for removal may be instituted by either house of the Legislature acting by a majority of all its members, or the Governor, by the filing of a complaint with the clerk of the supreme court, or such proceeding may be instituted by the Supreme Court on its own motion.

2A:1B-4. Prosecution of removal proceedings.

The Attorney General or his representative shall prosecute the proceedings

unless the Supreme Court shall specially designate an attorney for that purpose.

2A:1B-5. Suspension pending determination.

The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding; provided, however, that a judge shall receive pay for the period of suspension exceeding 90 days.

2A:1B-6. Preparation of defense; counsel; production of witnesses and evidence.

The judge shall be given a reasonable time to prepare his defense and shall be entitled to be represented by counsel. The prosecuting attorney and the judge shall have the right of compulsory process to compel the attendance of witnesses and the production of evidence at the Hearing.

2A:1B-7. Taking of evidence.

Evidence may be taken either before the Supreme Court sitting en banc or before three justices or judges, or a combination

thereof, specially designated therefor by the Chief Justice.

2A:1B-8. Rules governing.

Except as otherwise provided in this act, proceedings shall be governed by rules of the Supreme Court.

2A:1B-9. Removal.

If the Supreme Court finds beyond a reasonable doubt that there is a cause for removal, it shall remove the judge from office. A judge so removed shall not thereafter hold judicial office.

2A:1B-10. Suspension prior to hearing.

No hearing to remove a judge from office as provided for in this act shall be held until the cause for suspension, if the cause is a result of an independent civil, criminal or administrative action against the judge, is finally decided in a tribunal in which the judge had an opportunity to prepare his defense and was entitled to be represented by counsel.

2A:1B-11. The action of the Supreme Court may not extend further than removal from office, but proceedings under this act shall not preclude the institution of impeachment proceedings against a judge pursuant to Article VII, Section III of the Constitution or subjecting a judge to such criminal or penal proceedings as may be authorized by law.

APPENDIX E

SENATE NO. 3517

STATE OF NEW JERSEY

INTRODUCED DECEMBER 10, 1981

By Senators, J. RUSSO, HAMILTON and MERLINO

(Without Reference)

AN ACT concerning the removal of judges from office and amending section 5 of P.L. 1970, c. 151.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 5 of P.L. 1970, c. 151 (C2A: 1B-5 is amended to read as follows:

5. The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding; [provided, however, that a judge shall receive pay for the period of suspension exceeding 90 days]

2. This act shall take effect immediately.

STATEMENT

Presently, the Supreme Court may suspend a judge accused of wrongdoing from office without pay for a period of 90 days pending determination of the charges. This bill would allow this period to be increased indefinitely at the discretion of the Supreme Court.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

(2)

NO. 84-134

Office-Supreme Court, U.S.
FILED
AUG 25 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IN THE MATTER OF

PETER J. CORUZZI, JUDGE OF THE SUPERIOR COURT OF NEW JERSEY

On Appeal From the Supreme Court of New Jersey

MOTION OF APPELLEE TO DISMISS OF AFFIRM

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Questions Presented

1. Where a state statute is amended to lengthen the period of permissible suspension without pay for judges accused of and subject to removal for misconduct or unfitness, does a claim that the amendment violates the *Ex Post Facto* and Bill of Attainder provisions of the U.S. Constitution as applied to a judge under suspension and facing criminal charges at the time of the amendment constitute a challenge to the validity of the statutory amendment which comes within the appeal jurisdiction of this Court under 28 U.S.C. §1257(2).

2. Does an amendment to a state statute providing for the suspension and removal of judges for misconduct and unfitness which removes a limitation on the permissible period of suspension without pay give rise to a claim under the *Ex Post Facto* and Bill of Attainder clauses of the U.S. Constitution as applied to a judge under suspension at the time of the amendment where the removal statute and amendment are regulatory rather than punitive in purpose.

3. Can the amendment in issue give rise to a claim under the Impairment of Contract clause of the U.S. Constitution where the provisions concerning the removal and suspension of judges are provided for by State law, and no contract can be cited in support of the claim.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
MOTION OF APPELLEE TO DISMISS OR AFFIRM	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT OF THE CASE	2
ARGUMENT:	
Point I—This appeal should be dismissed because it does not challenge the validity of a state statute under the U.S. Constitution within the meaning of 28 U.S.C. §1257(2), but rather only challenges the statute as applied in this case	7
Point II—This appeal should be dismissed or the judgment of the Supreme Court of New Jersey affirmed because the federal questions raised are not substantial, in that New Jersey's Judicial Removal Statute is not punitive in intent or design so that the *ex post facto* and Bill of Attainder clauses of the U.S. Constitution do not apply, and in that a judge as a public official holds office under law, not contract, so the Impairment of Contract clause in the U.S. Constitution does not apply	8
CONCLUSION	22

PAGE

Table of Authorities

Cases Cited

Arthurs v. Board of Registration, 418 N.E.2d 1236 (Mass. 1981) 12

Beazell v. Ohio, 269 U.S. 167 (1925) 9

Brown, In re, 157 W.Va. 1, 197 S.E.2d 814 (1973) 12

Butler v. Pennsylvania, 51 U.S. 402 (1850) 19, 21

Calder v. Bull, 3 U.S. 386 (1798) 9

City of Hoboken v. Gear, 27 N.J.L. 265 (Sup. Ct. 1959) 20

Corn v. City of Oakland City, 415 N.E.2d 129 (Ind. Ct. App. 1981) 21

Coruzzi v. State of New Jersey, 705 F.2d 688 (3rd Cir. 1983) 6

Cummings v. Missouri, 71 U.S. 277 (1867) 10, 18

Dierner, In re, 268 Md. 659, 304 A.2d 587 (1973) 13

DeVeau v. Braisted, 363 U.S. 144 (1960) 10, 11

Flemming v. Nestor, 363 U.S. 603 (1960) 10, 17

Furnish v. Board of Medical Examiners, 149 Cal. App. 2d 326, 308 P.2d 924 (Ct. App. 1957), *cert. denied,* 355 U.S. 827 (1957) 12

Galloway v. Council of Clark Tp., 92 N.J. Super. 409, 223 A.2d 644 (Law Div. 1966), *aff'd* 94 N.J. Super. 527, 229 A.2d 279 (App. Div. 1967) 17

Garland, Ex parte, 71 U.S. 333 (1867) 10

Guarantee Trust Co. v. Blodgett, 287 U.S. 509 (1933) 13, 20

Hawker v. New York, 170 U.S. 189 (1898) 10, 11

PAGE

Hiss v. Hampton, 338 F. Supp. 1141 (D.D.C. 1972) 17

Indiana ex rel. Anderson v. Brand, 303 U.S. 95 (1938) 21

Judge, In re Inquiry Concerning, 357 So.2d 172 (Fla. 1978) 13

Kelly, In re, 238 So.2d 565 (Fla. 1970), *cert. denied,* 401 U.S. 962 (1971) 13

Kingsley International Picture Corp. v. Regents, 360 U.S. 684 (1959) 13, 20

Kingston v. McLaughlin, 359 F. Supp. 25 (D. Mass. 1972), *affirmed,* 411 U.S. 923 (1973) 21

Live Oak Ass'n v. Railroad Commission, 269 U.S. 354 (1926) 7

Needleman, Matter of, 63 A.D.2d 216, 407 N.Y.S. 2d 3 (App. Div. 1978) 12

Nicholson v. Jud. Ret. and Removal Com'n, 562 S.W. 2d 306 (Ky. 1978) 13

Nixon v. Administrator of General Services, 433 U.S. 425 (1977) 18

North Carolina State Bar v. DuMont, 52 N.C. App. 1, 277 S.E.2d 827 (Ct. App. 1981), *mod. and aff'd,* 304 N.C. 627, 286 S.E.2d 89 (1982) 12

Probert, Matter of, 411 Mich. 210, 308 N.W.2d 773 (1981) 13

Randall, Matter of, 640 F.2d 898 (8th Cir. 1981), *cert. denied,* 454 U.S. 880 (1981) 12

Rome, In re, 218 Kan. 198, 542 P.2d 676 (1975) 13

Seraphim, Matter of, 97 Wis.2d 485, 294 N.W.2d 485 (1980), *cert. denied,* 449 U.S. 994 (1980) 13

PAGE

Sharpe v. State ex rel. Oklahoma Bar Ass'n, 448 P. 2d 301 (Okla. Jud. 1968), *cert. denied,* 394 U.S. 904 (1969) 13

State v. Coruzzi, 189 N.J. Super. 273, 460 A.2d 120 (App. Div. 1983), *certif. denied,* 94 N.J. 531, 468 A.2d 184 (1983) 5, 6

Trop v. Dulles, 356 U.S. 86 (1958) 9

Turner v. Passaic Pension Comm., 10 N.J. Misc. 1270, 163 A.2d 282 (Sup. Ct. 1932) 20

United States v. Lovett, 328 U.S. 303 (1946) 18

United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 9

Virginia v. Imperial Coal Sales Co., 293 U.S. 15 (1934) 7

Wright v. Vogt, 7 N.J. 1, 80 A.2d 108 (1951) 17

Younger v. Harris, 401 U.S. 37 (1971) 6

United States Constitution Cited

Article I, Section 10, cl. 1 ..... 1, 6, 9, 18, 19, 21

United States Statutes Cited

28 U.S.C.:

Sec. 1257 7

Sec. 1257(2) 7, 8

42 U.S.C.:

Sec. 1983 6

PAGE

New Jersey Constitution Cited

Article VI, Section VI, Para. 4 ..... 2, 15

New Jersey Statutes Cited

N.J.S.A. 2A:1B-1 3
N.J.S.A. 2A:1B-2 3
N.J.S.A. 2A:1B-3 3
N.J.S.A. 2A:1B-5 ..... 3, 5, 8, 15, 17-19
N.J.S.A. 2A:1B-7 5
N.J.S.A. 2A:1B-10 4

Other Authorities Cited

16 C.J.S., Constitutional Law, Sec. 314..... 19

NO. 84-134

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IN THE MATTER OF

PETER J. CORUZZI, JUDGE OF THE SUPERIOR COURT OF NEW JERSEY

On Appeal From the Supreme Court of New Jersey

MOTION OF APPELLEE TO DISMISS OF AFFIRM

The appellee hereby moves to dismiss this appeal or summarily to affirm the judgment of the Supreme Court of New Jersey under Rule 16, Paragraph 1(a), 1(b) and 1(c) of the Rules of this Court.

Constitutional Provision Involved

Article I, Section 10, cl. 1:

> No state shall . . . pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. . .

Statement of the Case

Appellant Peter J. Coruzzi was a Judge of the Superior Court of New Jersey. On the morning of November 6, 1981 he was arrested on the steps of his courthouse for taking a bribe in exchange for a non-custodial sentence in a criminal matter before him. When arrested Judge Coruzzi had $12,000 in bribe money in his pockets, which his accomplice had given him on the way to work. The money constituted a partial payment on a $20,000 bribe which was to be split with the accomplice.

On November 10, 1981, four days later, the facts were formally reported to the Supreme Court of New Jersey in the form of an affidavit sworn to by the Director of New Jersey's Division of Criminal Justice which prosecuted the matter. On that same day the Supreme Court of New Jersey filed a complaint seeking the removal of Judge Coruzzi from office, and it suspended him without pay pending the determination of the criminal proceedings.

Judicial removal proceedings are governed by constitution and statute in New Jersey. New Jersey's Constitution of 1947 provides in Article VI, Section VI, Paragraph 4:

> The Justices of the Supreme Court and the Judges of the Superior Court shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

In accordance with this constitutional authorization New Jersey's Legislature in 1970 enacted the Judicial Removal Act, N.J.S.A. 2A:1B-1 et seq. The Act provides for the removal of judges for misconduct in office or unfitness by proceedings in the Supreme Court of New Jersey, and provides that judges might be temporarily suspended with or without pay during the pendency of removal proceedings. The pertinent statutory provisions are as follows:

> N.J.S.A. 2A:1B-2. Cause for removal
>
> A judge may be removed from office by the Supreme Court for misconduct in office, willful neglect of duty, or other conduct evidencing unfitness for judicial office, or for incompetence.
>
> N.J.S.A. 2A:1B-3. Institution of removal proceedings.
>
> A proceeding for removal may be instituted by either house of the Legislature acting by a majority of all its members, or the Governor, by the filing of a complaint with the clerk of the Supreme Court, or such proceeding may be instituted by the Supreme Court on its own motion.

At the time of Judge Coruzzi's suspension, the statute also provided:

> N.J.S.A. 2A:1B-5. Suspension pending determination.
>
> The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding; provided, however, that a judge shall receive pay for the period of suspension exceeding 90 days.

On November 20, 1981 Judge Coruzzi was indicted for soliciting and accepting bribes in exchange for reduced and noncustodial sentences in three criminal matters before him. In one case a $10,000 bribe was paid with $7,000 going to Judge Coruzzi, in a second case a $20,000 bribe was paid with $15,000 going to Judge Coruzzi, and in a third case a $35,000 bribe was negotiated with $25,000 to go to Judge Coruzzi—the last arrangement had not come to fruition as of the time of Judge Coruzzi's arrest.

New Jersey's Judicial Removal Act contemplates that removal proceedings might be instituted in consequence of the filing of criminal charges against a judge, but also provides that a final determination of removal may not be made in such case until the criminal charges are finally determined. N.J.S.A. 2A:1B-10 provides in part:

> No hearing to remove a judge from office as provided for in this act shall be held until the cause for suspension, if the cause is a result of an independent civil, criminal or administrative action against the judge, is finally decided in a tribunal in which the judge had an opportunity to prepare his defense and was entitled to be represented by counsel.

As noted, Judge Coruzzi was arrested on November 6, 1981, and on November 10, 1981 the Supreme Court filed a complaint for removal and suspended Judge Coruzzi without pay. The first ninety days of his suspension ran from November 10, 1981 to February 8, 1982. The statutory amendment in issue on this appeal was introduced in the New Jersey Senate on December 10, 1981, or a month after Judge Coruzzi was suspended. It was enacted by both houses of the Legislature and signed into law by the Governor on January 12, 1982, the 64th day of the suspen-

sion. The amendment altered N.J.S.A. 2A:1B-5 by eliminating the final clause and the 90 day limitation on withholding pay during a suspension, as follows:

> The Supreme Court may suspend a judge from office, with or without pay, pending the determination of the proceeding; *provided, however, that a judge shall receive pay for the period of suspension exceeding 90 days.* (italized language omitted by amendment).

The original 90 day limitation would not have come into play with respect to appellant until approximately one month after the amendment was enacted.

On March 25, 1982 Judge Coruzzi was found guilty of four counts of bribery by a jury, and on May 7, 1982 he was sentenced to a five year prison term. The Appellate Division of the Superior Court of New Jersey affirmed the conviction, *State* v. *Coruzzi,* 189 N.J. Super. 273, 460 A.2d 120 (App. Div. 1983), and the Supreme Court of New Jersey denied certification, 94 N.J. 531, 468 A.2d 184 (1983). Respondent was committed to a State prison and served his sentence.

The criminal proceedings having finally been determined adversely to Judge Coruzzi, the removal proceedings went forward. A three judge panel was designated to hear the evidence for the Supreme Court pursuant to N.J.S.A. 2A:1B-7. In a report to the New Jersey Supreme Court dated October 14, 1983, the panel found that the conviction conclusively established Judge Coruzzi's guilt, and, given the facts alleged and the crime charged, that it mandated his removal from office. By the decision rendered on March 20, 1984 which is the subject of this appeal, the Supreme Court of New Jersey removed Judge Coruzzi from office on the basis of the criminal conviction.

Earlier, on May 31, 1983, Judge Coruzzi had moved to modify the original order of suspension, to restore his judicial salary during the suspension, on the grounds now raised on this appeal. That application was denied in the New Jersey Supreme Court in its March 20, 1984 decision. Judge Coruzzi was not, therefore, paid during any portion of his suspension. The facts and evidence concerning appellant's crimes and the criminal proceedings against him are set forth at length in the Appellate Division decision affirming his conviction. *State* v. *Coruzzi,* 189 N.J. Super. 273, 460 A.2d 120 (App. Div. 1983), *certif. denied,* 94 N.J. 531, 468 A.2d 184 (1983). See also the decision below. Appellant's Appendix A.*

*As reflected in his jurisdictional statement, Judge Coruzzi's first attempt to seek the restoration of his pay during his supension was by filing a complaint in the U.S. District Court in New Jersey under 42 U.S.C. §1983, raising the *Ex Post Facto* and Bill of Attainer claims, but not the Impairment of Contract claim. The District Court granted summary judgment dismissing the complaint on the ground that the Judicial Removal Act was not punitive in nature. Appellant's Appendix B. The Third Circuit affirmed, but on the ground that the District Court should have abstained from hearing the matter under *Younger* v. *Harris,* 401 U.S. 37 (1971). Appellant's Appendix C, *Coruzzi* v. *State of New Jersey,* 705 F.2d 688 (3rd Cir. 1983).

ARGUMENT

POINT I

This appeal should be dismissed because it does not challenge the validity of a state statute under the U.S. Constitution within the meaning of 28 U.S.C. §1257(2), but rather only challenges the statute as applied in this case.

28 U.S.C. §1257 provides in the paragraph under which this appeal is brought that final judgments rendered by the highest court of a state may be reviewed by this Court:

> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

This Court's appellate jurisdiction may be invoked under 28 U.S.C. §1257(2) where the validity of a state statute is challenged, but not where it is simply claimed that a right, privilege or immunity under the U.S. Constitution has been violated. *Live Oak Ass'n* v. *Railroad Commission,* 269 U.S. 354 (1926); *Virginia* v. *Imperial Coal Sales Co.,* 293 U.S. 15 (1934).

Appellant does not challenge the amendment to the Judicial Removal Act on its face or in its normal application, but only as applied to him because he was under suspension and facing criminal charges at the time of the amendment. The appeal is not then a challenge to the validity of the amendment on its face, for even if successful, no provision or language in the statute should be found invalid. Rather, the appeal merely challenges the amendment as applied in this case and involves simply a claim that respondent was

denied a right, privilege or immunity arising under the U.S. Constitution, which would constitute a basis for seeking *certiorari* but not an appeal. For this reason it is contended that there is no jurisdiction under 28 U.S.C. §1257 (2) and that the appeal as to these claims should therefore be dismissed.

POINT II

This appeal should be dismissed or the judgment of the Supreme Court of New Jersey affirmed because the federal questions raised are not substantial, in that New Jersey's judicial removal statute is not punitive in intent or design so that the *Ex Posto Facto* and Bill of Attainder Clauses of the U.S. Constitution do not apply, and in that a judge as a public official holds office under law, not contract, so that the Impairment of Contract Clause in the U.S. Constitution does not apply.

Appellant challenges the application of the amndment of N.J.S.A. 2A-1B-5 to him. When he was suspended from office the statute provided that the denial of pay during a suspension for misconduct would not extend beyond the first 90 days of a suspension. The amendment was enacted before the expiration of the first 90 days of appellant's suspension so that appellant would not have been entitled to pay under the former 90 day limitation until after the time of the amendment. Yet appellant contends that the amendment—which had only a prospective effect upon him—violated the *Ex Post Facto*, Bill of Attainder and Impairment of Contract clauses of the U.S. Constitution.

The Supreme Court of New Jersey rejected the *Ex Post Facto* and Bill of Attainder claims on the ground that

those provisions apply only to laws which are penal in nature, and that neither the Judicial Removal Act nor the amendment are penal in nature. It also rejected the Impairment of Contract claim on the ground that appellant as a public official held his position under the law and not contract so that the Impairment of Contract clause does not apply. The Supreme Court of New Jersey's decision with respect to these claims is set forth in its March 20, 1984 slip opinion, reprinted in Appellant's Appendix A, at pages A35 to A51. Its decision is in accordance with law and thus gives rise to no substantial federal claim and should be affirmed.

Article 1, Section 10, Clause 1 of the U.S. Constitution prohibits states from enacting *ex post facto* laws, which are generally defined as laws which impose a criminal penalty for past conduct which was lawful when performed, or impose a penalty for past conduct which is harsher than provided for when the conduct occurred. *Beazell* v. *Ohio,* 269 U.S. 167 (1925).

Beginning with this Court's decision in *Calder* v. *Bull,* 3 U.S. 386 (1798), the *ex post facto* prohibition has been interpreted as only extending to laws which are penal in nature. The provision "limit[s] the powers of the States only with regard to the imposition of punishment." *United States Trust Co.* v. *New Jersey,* 431 U.S. 1, 17 at n. 13 (1977).

The determination of whether a legislative enactment is penal in nature depends on the substance of the legislation and a legislature's intent in enacting it, and not on the form of the enactment. Thus, this Court said in *Trop* v. *Dulles,* 356 U.S. 86, 96 (1958):

> [i]f the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc., it has been considered

> penal. But a statute has been considered non-penal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose. The Court has recognized that any statute decreeing some adversity as a consequence of certain conduct may have both a penal and a non-penal effect. The controlling nature of such statutes normally depends on the evident purpose of the legislature.

Accord, Flemming v. *Nestor,* 363 U.S. 603 (1960). This focus on substance over form was first articulated by the Court in two post-Civil War cases, *Cummings* v. *Missouri,* 71 U.S. 277 (1867) and *Ex parte Garland,* 71 U.S. 333 (1867), in which post-Civil War statutes required persons seeking to engage in certain professions to swear under oath that they had not committed any acts of hostility or disloyalty against the government of the United States. In each case the Court found that the laws were clearly designed to inflict further punishment on those who had opposed the Union during the Civil War, and, since the statutes did not serve any legitimate regulatory purpose, the Court concluded that they were *ex post facto* laws even though they were regulatory rather than penal in form. *Cummings,* 71 U.S. at 324; *Ex parte Garland,* 71 U.S. at 378.

While the emphasis on purpose is of critical importance where an effort is made to disguise a punitive intent underlying a law, as in *Cummings* and *Ex parte Garland,* it is equally important where a law is regulatory in purpose, but appears to be penal. *DeVeau* v. *Braisted,* 363 U.S. 144 (1960) and *Hawker* v. *New York,* 170 U.S. 189 (1898) are cases of this type. *Hawker* involved a New York statute which prohibited anyone convicted of a felony from practicing medicine, and an ex-felon contended that the statute was an *ex post facto*

law as applied to him since he was convicted before the statute was enacted. The Court rejected this contention, saying in part (170 U.S. at 196):

> That the form in which this legislation is cast suggests the idea of the imposition of an additional punishment for past offenses is not conclusive. We must look at the substance, and not the form. . . . The State is not seeking to further punish a criminal, but only to protect its citizens from physicians of bad character.

The restriction in *Hawker* was found to serve a legitimate regulatory purpose, and this non-penal purpose led the Court to conclude that the *ex post facto* clause did not apply. 170 U.S. at 200. In *DeVeau* the New York Waterfront Commission Act provided that no person could collect dues on behalf of a labor union if any officer of the union had been convicted of a felony, and a union officer who was convicted of a felony before the passage of the act contended that it violated the *Ex Post Facto* clause. This Court again emphasized that the substance of the statute, not its form, governed. It said (363 U.S. at 160):

> The mark of an *ex post facto* law is the imposition of what can fairly be designated punishment for past acts. The question in each case where unpleasant circumstances are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession.

The absence of a punitive purpose has proved fatal when *ex post facto* arguments have been raised in pro-

fessional disciplinary proceedings. Such proceedings have uniformly been held to protect the public against unworthy professionals and not to punish. *Ex post facto* arguments have been rejected in attorney disciplinary proceedings. See *Matter of Randall,* 640 F.2d 898, 905 (8th Cir. 1981), *cert. den.* 454 U.S. 880 (1981); *North Carolina State Bar* v. *DuMont,* 52 N.C. App. 1, 277 S.E. 2d 827, 835-36 (Ct. App. 1981), *mod. and aff'd,* 304 N.C. 627, 286 S.E.2d 89 (1982); *Matter of Needleman,* 63 A.D. 2d 216, 407 N.Y.S.2d 3, 5 (App. Div. 1978); *In re Brown,* 157 W.Va. 1, 197 S.E.2d 814, 817 (1973). *Ex post facto* claims have also been rejected in physician disciplinary proceedings for the same reason. See *Arthurs* v. *Board of Registration,* 418 N.E.2d 1236, 1246 (Mass. 1981); *Furnish* v. *Board of Medical Examiners,* 149 Cal. App.2d 326, 308 P.2d 924 (Ct. App. 1957), *cert. den.,* 355 U.S. 827 (1957).

Judicial disciplinary proceedings have uniformly been recognized as serving a regulatory purpose rather than a punitive purpose, and appellant concedes the statute here is regulatory as generally applied. Jurisdictional Statement, page 13. The Supreme Court of North Carolina described such proceedings as being:

> . . . neither criminal nor civil in nature. It is an inquiry into the conduct of a judicial officer, the purpose of which is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges. [*In re Crutchfield,* 289 N.C. 597, 602, 223 S.E.2d 822, 825 (Sup. Ct. 1975)].

A judicial disciplinary proceeding "lacks the essential characteristics of a criminal prosecution. The object is

not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." *In re Kelly*, 238 So.2d 565, 569 (Fla. 1970), *cert. den.* 401 U.S. 962 (1971). *Accord, In re Rome,* 218 Kan. 198, 542 P.2d 676, 682-83 (1975); *In re Diener,* 268 Md. 659, 304 A.2d 587 (1973), *cert. den.* 415 U.S. 989 (1974); *Sharpe* v. *State ex rel. Oklahoma Bar Association,* 448 P.2d 301, 307 (Okla. Jud. 1968), *cert. den.* 394 U.S. 904 (1969); *Matter of Probert,* 411 Mich. 210, 308 N.W.2d 773 (1981). The Supreme Court of New Jersey in the decision below followed this uniform body of law and held that New Jersey's Judicial Removal Act and the amendment are not penal in purpose. Appellant's Appendix A, at A28, A41, A43-A45, A48-A49. Since the issue involves the construction of New Jersey law, the New Jersey Supreme Court's determination should not be subject to review in this Court. *Guarantee Trust Co.* v. *Blodgett,* 287 U.S. 509 (1933); *Kingsley International Picture Corp.* v. *Regents,* 360 U.S. 684 (1959).

Several courts in addition to the New Jersey Supreme Court have considered and rejected *ex post facto* arguments raised in judicial disciplinary proceedings on the ground that such proceedings are not penal. *Matter of Seraphim,* 97 Wis.2d 485, 294 N.W.2d 485, 490-91 (1980), *cert. den.* 449 U.S. 994 (1980); *In re Inquiry Concerning a Judge, etc.,* 357 So.2d 172, 180-81 (Fla. 1978); *Nicholson* v. *Jud. Ret. and Removal Com'n.,* 562 S.W.2d 306, 308 (Ky. 1978). The Supreme Court of Kentucky in *Nicholson,* in rejecting an *ex post facto* claim in a judicial disciplinary proceeding based on conduct which occurred before the tribunal was established, said (562 S.W.2d at 308):

> It is clear that the "ex post facto" prohibition applies only to criminal matters. Beazell v. Ohio, 269 U.S. 167, 169, 46 S.Ct. 68, 70 L.Ed. 216 (1925);

Thompson v. Utah, 170 U.S. 343, 18 S.Ct. 620, 42 L.Ed. 1061 (1898); Kring v. Missouri, 107 U.S. 221, 2 S.Ct. 443, 27 L.Ed. 506 (1883); Calder v. Bull, 3 U.S. (3 Dall.) 386, 1 L.Ed. 648 (1798). A proceeding before the Commission is not a criminal matter. See Napolitano v. Ward, 457 F.2d 279 (7th Cir. 1972), cert. den. 409 U.S. 1037, 93 S.Ct. 512, 34 L.Ed.2d 486, reh. den. 410 U.S. 947, 93 S.Ct. 1351, 35 L.Ed.2d 616; In re Haggerty, 257 La. 1, 241 So.2d 469 (1970); Sharpe v. State, 448 P.2d 301 (Okl. Jud. 1968), cert. den. 394 U.S. 904, 89 S.Ct. 1011, 22 L.Ed.2d 216.

The purpose of Section 121 of our constitution is the regulation of the conduct of those persons charged with the administration of justice. The aim of proceedings instituted pursuant to this section is to improve the quality of justice administered within the Commonwealth by examining specific complaints of judicial misconduct, determining their relation to a judge's fitness for office and correcting any deficiencies found by taking the least severe action necessary to remedy the situation. The target is not punishment of the judge. Consequently, the action of the Commission does not constitute a violation of the "ex post facto" prohibition of the federal and state constitutions. See Flemming v. Nestor, 363 U.S. 603, 614, 80 S.Ct. 1367, 4 L.Ed.2d 1435, 1446 (1960); DeVeau v. Braisted, 363 U.S. 144, 160, 80 S.Ct. 1146, 4 L.Ed.2d 1109, 1120 (1960). Cf. Ex parte Garland, 4 Wall. 333, 71 U.S. 333, 18 L.Ed. 366 (1866); Cummings v. Missouri, 4 Wall. 277, 71 U.S. 277, 18 L.Ed. 356 (1866).

The New Jersey Judicial Removal Act has the same non-penal purpose as the proceedings in the foregoing

cases. New Jersey's Constitution authorizes the Legislature to provide for the removal of Superior Court judges apart from impeachment, N.J. Const. Art. VI, Sect. VI, Para. 4, and the Act was passed in 1970 in response to a long series of requests by members of the New Jersey legal community for the creation and implementation of a judicial removal system in accordance with the Constitution. See Sullivan, Mark A., "Discipline of Judges," 88 N.J.L.J. 265 (1965); "Legislation Needed For Judicial Discipline and Reform," 92 N.J. L.J. 336 (1969); "Removal of Judges—Senate No. 116." 93 N.J.L.J. 52 (1970).

The issue on this appeal is whether the amendment should be treated as having a punitive purpose as applied to respondent because it was passed while he was under suspension. Appellant concedes the amendment is not punitive as applied in future cases, at page 13 of his Jurisdictional Statement. It is true that appellant lost the right to be paid at a point following the amendment of N.J.S.A. 2A:1B-5 when he remained suspended and not working. But, as noted above, the mere fact that an individual may suffer "unpleasant circumstances" as a result of the enactment of a law does not render the law penal in nature so that the *ex post facto* clause applies. The question is whether the consequence for the individual is the intended purpose of the law and whether it is intended to punish, or whether instead the adverse consequence is merely a "relevant incident" to another legitimate non-penal purpose.

Plainly judicial disciplinary proceedings and temporary suspensions without pay are intended to maintain public confidence in the judiciary. Judicial removal proceedings must be administered by the judiciary if independence is to be preserved, and thus it is in the nature of self-regulation. The strength of the public's

confidence in a self-regulated judiciary will depend on whether it believes the judiciary will regulate itself rigorously in accordance with high public standards, and whether it does so without affording undue advantage or privilege to its members. Anything that causes the public to doubt or question the integrity of judicial removal proceedings undermines the public's confidence in them, and thus defeats the very purpose of the proceedings and undermines the effectiveness of the judiciary.

Appellant's continued receipt of his publicly funded salary during his suspension would cause just such an erosion of public confidence. A salary is generally regarded as something that is earned. The notion that an individual accused of serious wrongdoing such as bribery should continue to function as a judge where a grand jury has indicted him, or to continue to be paid his salary while not working because he is suspended under such circumstances could be perceived by the public as unduly solicitous and certainly as extending to judges greater privileges than most people would enjoy. It could also be viewed as evidence that members of the judiciary are unwilling to discipline "one of their own," and are incapable of addressing allegations of professional misconduct in a detached, dispassionate manner. Continuing to pay a judge who is not working because he has been indicted by a State grand jury for bribery could also appear to the public to be an inappropriate expenditure of public funds and a form of favoritism and privilege, and create the impression that the judiciary is not overly concerned when a judge violates his sacred oath to exercise his powers honestly and not in exchange for bribes.

Nor does the fact that the amendment was enacted after reports to the New Jersey Legislature that appellant would probably be entitled to resume collecting his pay

during his suspension under the 90 day limitation in the statute support the conclusion that the amendment was directed only at him or intended to punish him. The amendment of N.J.S.A. 2A:1B-5 is general in scope and not limited to appellant. Compare *Hiss* v. *Hampton,* 388 F. Supp. 1141 (D.D.C. 1972), cited by appellant, in which Congress enacted a statute which the legislative history demonstrated was intended to punish a particular individual, and which operated to deprive a narrowly and arbitrarily drawn class of federal employees of pension benefits which could only have included that individual.

The obvious intent of the amendment to N.J.S.A. 2A:1B-5 was not to punish appellant. Rather, appellant's case made it apparent that there was a shortcoming in the statute, namely that a judge suspended for criminal conduct would be paid while suspended and indicted, after the first 90 days. Where a legitimate purpose can be discerned in legislation, a court should not infer the existence of an additional improper purpose. In addition, "it is obligatory in statutory construction to take, or presume, the intention of the Legislature according to what is consonant with reason and good discretion," *Galloway* v. *Council of Clark Tp.,* 92 N.J. Super. 409, 424, 223 A.2d 644 (Law Div. 1966), *aff'd* 94 N.J. Super. 527, 229 A.2d 279 (App. Div. 1967). *Accord, Wright* v. *Vogt,* 7 N.J. 1, 6, 80 A.2d 108 (1951).

Moreover, appellant cites no legislative history for the amendment to support his contention that it was enacted to punish him individually. As this Court noted in rejecting an *ex post facto* argument in *Flemming* v. *Nestor,* 363 U.S. 603, 617 (1960);

> only the clearest proof [can] suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquires into Congressional motives are at

> best a hazardous matter, and when the inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed . . . . "[I]t is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void."

Appellant's contention that the amendment to N.J.S.A. 2A:1B-5 is a bill of attainder is without merit for similar reasons. The passage of bills of attainder, like the enactment of *ex post facto* laws, is prohibited by Article I, §10, Clause 1 of the U.S. Constitution. A bill of attainder is defined as "a legislative act which inflicts punishment without a judicial trial," *Cummings* v. *Missouri*, 71 U.S. 277 (1867) at 323. Likewise the prohibition against *ex post facto* laws, the prohibition against bills of attainder only extends to laws that have a punitive purpose. *United States* v. *Lovett*, 328 U.S. 303, 321-328 (1946) (concurring opinion of Justice Frankfurter); *Nixon* v. *Administrator of General Services*, 433 U.S. 425 (1977). *Nixon* involved a statute directing the GSA to take custody of presidential papers, and this Court rejected a contention that it was a penal statute such that the prohibition against bills of attainder applied. It relied on the same analysis utilized in considering *ex post facto* claims, saying the proper approach was to apply a (433 U.S. at 475-76):

> functional test of the existence of punishment, analyzing whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes. Cummings v. Missouri, 4 Wall. at 319-320; Hawker v. New York, 170 U.S. 189, 193-194, 18 S.Ct. 573, 575, 42 L.Ed. 1002 (1898); Dent v. West Virginia, 129 U.S. 114, 128, 9 S.Ct. 231, 235, 32 L.Ed. 623 (1889); Trop v. Dulles, 356

> U.S. 86, 96-97, 78 S.Ct. 590, 595-596, 2 L.Ed.2d 630 (1958) (plurality opinion); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-169, 83 S.Ct. 554, 567-568, 9 L.Ed.2d 644 (1963). Where such legitimate legislative purposes do not appear, it is reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decision makers.

As noted above, New Jersey's Judicial Removal Act serves an important public purpose in regulating the judiciary and in protecting the integrity and appearance of integrity in the judiciary. Neither it nor the amendment are punitive in intent or design, and therefore neither the *ex post facto* or bill of attainder prohibitions apply, and appellant's claim must fail.

Appellant's third and final contention is that the application of the amendment of N.J.S.A. 2A:1B-5 to him violates the portion of Article I, Section 10, Clause 1 of the U.S. Constitution which prohibits the states from passing laws "impairing the obligation of contracts . . .". However, the Impairment of Contracts Clause does not apply to appointed public officials. 16 *C.J.S. Constitutional Law* §314 at 1346. Instead, such officials have been uniformly held to be beyond the protection of the clause because such officials do not hold office under contracts to which the constitutional protection applies. Since *Butler* v. *Pennsylvania*, 51 U.S. 402 (1850) it has been settled that the appointment by which an individual assumes a public office is not a "contract" within the meaning of the Impairment of Contracts Clause.

In *Butler* three state canal commissioners complained that a state statute which reduced their statutorily prescribed salaries violated the Impairment of Contracts Clause because their appointments constituted state con-

tracts. However, this Court held that their appointments did not constitute contracts within the meaning of the clause. It said (51 U.S. at 416):

> The contracts designed to be protected by the tenth section of the first article of [the Constitution] are contracts by which perfect rights, certain definite, fixed private rights of property, are vested. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic or state government for the benefit of all, and from the necessity of the case, and according to universal understanding, to be varied or discontinued as the public good shall require.

This Court also said (51 U.S. at 417):

> [T]he appointment to and the tenure of an office created for the public use, and the regulation of the salary affixed to such an office, do not fall within the meaning of the section of the Constitution relied on by the plaintiffs in error; do not come within the import of the term "contracts," or, in other words, the vested, private personal rights thereby intended to be protected.

Moreover, as determined by the Court below, under New Jersey law an appointment to a public office has long been held to not constitute a contract. See *City of Hoboken* v. *Gear*, 27 N.J.L. 265, 277 (Sup. Ct. 1859); *Turner* v. *Passaic Pension Commission*, 10 N.J. Misc. 1270, 1273, 163 A. 282 (Sup. Ct. 1932). Since the issue involves the construction of New Jersey law, the New Jersey Supreme Court's determination should not be subject to review in this Court. *Guarantee Trust Co.* v. *Blodgett*, 287 U.S. 509 (1933); *Kingsley International Picture Corp.* v. *Regents*, 360 U.S. 684 (1959). It has also

been held elsewhere that the *Butler* rule applies to members of the judiciary who are appointed public officials. *Kingston* v. *McLaughlin*, 359 F. Supp. 25, 29 (D. Mass. 1972), *affirmed*, 411 U.S. 923 (1973); *Corn* v. *City of Oakland City*, 415 N.E.2d 129, 133 (Ind. Ct. App. 1981). *Compare*, *Indiana ex rel. Anderson* v. *Brand*, 303 U.S. 95 (1938) in which this Court held that a teacher was protected by the Impairment of Contract Clause because an employment contract did exist. It said that under state law, "[t]he position of a teacher in the public schools is not a public office, but an employment by contract between the teacher and the school corporation." 303 U.S. at 106.

In summary, Judge Coruzzi held his position as a judge under law and the terms and conditions of his office were provided for by law and not contract, and therefore any change in the law concerning his right to be paid his salary while suspended for taking bribes in office could not possibly implicate Article I, Section 10, Clause 1 of the U.S. Constitution, which prohibits states from passing a "law impairing the obligation of contracts." Moreover, both the Judicial Removal Act and the amendment lengthening the permissible period of a suspension without pay do not violate the *Ex post facto* and Bill of Attainder prohibitions of the U.S. Constitution as applied to appellant because they serve a regulatory and not punitive purpose.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed or the judgment of the Supreme Court of New Jersey summarily affirmed.

Respectfully submitted,

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Dated: August 23, 1984